TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

[redacted]

No. [redacted] 74.

WILHELMINA ELIZABETH PETERSEN ET AL., LEGATEES OF ANNA MARGRETHE ANDERSON, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE STATE OF IOWA EX REL. THE STATE TREASURER ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

[redacted]

(25,063)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 331.

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vs.

THE STATE OF IOWA *EX REL.* THE STATE TREASURER ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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In the Supreme Court of Iowa, May Term, 1913.

In the Matter of the Estate of ANNA MARGRETHE ANDERSON, Deceased; Whelmina Elizabeth Peterson et al., Legatees and Appellants; The United States, Intervenor and Appellant; C. L. Hanson, Administrator and Appellee; The State of Iowa ex Rel. The State Treasurer, Claimant and Appellee.

In Probate.

Appeal from Mitchell County District Court.

Hon. J. F. Clyde, Judge.

Bastrup & O'Neil, of Chicago, Attorneys for Wilhelmina Elizabeth Peterson, et al., Appellants.

Frederick F. Faville, of Storm Lake, Iowa, Attorney for the United States, Appellant.

A. E. Brown of Osage, Iowa, Attorney for State of Iowa, Appellee.

A. A. Kugler, of Osage, Iowa, Attorney for C. L. Hanson, administrator, Appellee.

Appellants' Abstract of Record.

Due, timely and legal service of the within abstract of record is hereby acknowledged this 4th day of March, 1913.

A. E. BROWN,
Att'y for State of Iowa.
A. A. KUGLER,
Att'y for C. L. Hanson, Adm'r.

2 *Statement.*

On February 16th, 1909, the decedent, Anne Margrethe Anderson, died testate in Mitchell County, Iowa, being at the time of her death, a citizen and resident of said County.

The estate of said deceased consisted of a house and lots in the city of Osage, and certain personal property.

The deceased was a widow, without direct issue, at the time of her death.

The will of the decedent provides for the payment of certain debts and charges and makes small bequests not involved in this suit, and orders the executor to sell the real estate and reduce the entire estate to money and pay the residuary proceeds of both the personal and real estate of the sons and daughters of two deceased sisters and a deceased brother. All of said residuary legatees are citizens and residents of the Kingdom of Denmark.

The executor under the will died without selling the real estate and an administrator with the will annexed under the order of said court, reduced the entire estate to money.

The Treasurer of State claims a collateral inheritance tax of twenty per cent on the net proceeds of said estate bequeathed to the alien beneficiaries, and the administrator with the will annexed filed his final report showing the payment of the amount of said tax of twenty per cent amounting to $513.96.

The residuary legatees, being the nonresident aliens referred to, filed objections to the final report of said administrator with the will annexed, claiming that said estate was subject to a tax of but five per cent, under a treaty between the United States and the Kingdom of Denmark.

The United States appeared by petition of intervention, filed by the United States Attorney for the North District of Iowa, and joined in the objections of the alien legatees, and set up the treaty referred to, and urged the invalidity of the statute allowing a tax of twenty per cent, under the treaty.

3 The State of Iowa, ex rel. the State Treasurer, demurred to the petition of intervention of the United States. The demurrer was sustained by the Court and the objections of the alien legatees were overruled, and all parties electing to stand on their pleadings, the report of the administrator was approved.

The alien legatees and the United States of America prosecute this appeal from the order approving said final report.

On or about November 22nd, 1911, the Administrator with the will annexed in said matter filed in the District Court of Mitchell County, Iowa, his Final Report, as follows:—

Comes now C. L. Hansen, administrator of said estate and reports as his doings in said estate, as follows:—

That on the 7th day of March, 1910, he was appointed administrator of said estate with will annexed; that by the terms of the will of deceased, H. S. Houg was appointed executor of said estate, and the court confirmed said appointment; that before the expiration of the year for probating said estate, the said H. S. Houg died; that on the 26th day of March, 1910, J. A. Broth, executor of the estate of said H. S. Houg, made a report of the doings of said H. S. Houg as executor of the above named estate, and by the terms of said report there was turned over to this administrator and he receipted therefor, the sum of $1,983.68, and a small house and two lots situated in Osage, Iowa; that the report of said J. A. Groth, executor of the estate of H. S. Houg, was duly approved, and hence this administrator had charged himself with the property received from the estate of H. S. Houg as above set forth and his report covers such property together with such as has come into his hands since his appointment.

That he has collected and charged himself with the following items, to-wit: Interest on certificate of deposit $43.47; further interest on certificate of deposit $33.50; proceeds from the sale of

house and lots $860; interest on the price of sale of the fore-
4 going named real estate, $12.90; rent of the house and lots $44.50; additional interest in the sum of $5.38, making a total with which he stands charged of $2,983.43;

That he has paid out the following items: To the cemetery ass'n of Osage, Iowa, the sum of $25, provided by the terms of the will; to John McCullough for setting monument, $4.50; to Maria Hansen for labor performed for deceased, $2.00; to J. A. Groth, executor of the estate of H. S. Houg, fee for service of said H. S. Houg, in said estate $20; Robert Connell for monument for deceased, $107; to Cromer Co. $2.25 for curtains for house; to M. Gauss $1.90 for cu-tains for house; to County treasurer of Mitchell County $11.10 for taxes for the year 1909; to the Clerk of the District Court $37.85; to the County Treasurer as taxes for the year 1910, $13.03; to the Treasurer of the State of Iowa for collateral inheritance tax at 20 per cent and interest $513.96; to H. G. Bartlett for abstract to house and lots $3.50; to J. H. Johnson, for abstract of title to lots, $7.50; to Alvert Christiansen for labor on side-walk $1.50; that he has credited himself with $1.80 which he paid for register-ing 12 letters to the legatees of said estate notifying them of applica-tion to sell the real estate belonging to said estate; that he has also credited himself with $1.00 for expense of trip to Charles City for getting approval of sale of real estate; that he has also taken credit to himself for labor performed by him in assisting in erecting the monument for deceased in the sum of $4.00, which amount he says is reasonable and just; that he has also taken credit for 60 cents paid by him for exchange on drafts to the State treasurer in pay-ment of Collateral Inheritance Tax; that he has paid to A. A. Kugler of Osage, the sum of $51.50, $1.50 of said amount being for postage and stenography work in said estate, and $50 for at-torneys fees; that the employment of said attorney by him was necessary for the purpose of making application for sale of real
estate, to enforce the completion of said sale, to make reports
5 and to render advice, etc., in connection with said estate, and that the charges made for said services, he believes to be just and reasonable that he has credited himself with commissions at statutory rates for his services in administering said estate in the sum of $99.45; all of which he respectfully asks this court to approve and ratify.

A statement of receipts and expenditures is annexed hereto and made part of this report, together with the vouchers covering the respective amounts paid out.

That the sale of real estate belonging to said estate, was made by this administrator, in accordance with the provisions of said will and by authority of an order of this court, which said sale was reported to and approved by this Court.

That there remains in the hands of this administrator for dis-tribution to the legatees of said deceased, as provided by the terms of decedent's will, the sum of $2074.24; that by the terms of said will the said balance on hand for distribution, is to be divided into three equal parts, and one part to go to the children of Hans Hansen,

brother of deceased; one share to the children of Bodil, sister of decedent; and the remaining share to the children of Karen, sister of decedent; that the children of Hans Hansen, entitled to one share of said remainder and the portion to which they are entitled are as follows:

$230.47 to Wilhelmina Elizabeth Peterson, one-third of one-third or 1-9th.

230.47 to Olive Nielsine Petersen, one-third of one-third or 1-9th.

$230.47 to Hans Peter Julius Hansen, one-third of one third or 1-9th.

That the children of Bodil, sister of decedent and the portion to which each are entitled are as follows:

$230.47 to Ane Kirstine Sorensen, one-third of one-third or 1-9th.

$230.47 to Peter Christian Jorgensen, one-third of one-
6 third or 1-9th.

$230.47 to Hans Peter Jorgensen, one-third of one-third or 1-9th.

That the children of Karen, sister of decedent, and the portion to which each are entitled are as follows:

$115.24 to Hans Larsen, one-sixth of one-third or 1-18th.

$115.24 to Lars Larsen, one-sixth of one-third or 1-18th.

$115.24 to Niels Larsen, one-sixth of one-third or 1-18th.

$115.24 to Jens Peter Larsen, one-sixth of one-third or 1-18th.

$115.24 to Karen Maria Christoffersen, one-sixth of one-third or 1-18th.

$115.24 to Ane Sophia Petersen, one-sixth of one-third or 1-18th.

That said estate has been in probate for considerable more than the year required by law; that all claims filed in said estate have been paid; that there remains nothing further to do in the premises except to make distribution in accordance with the schedules above set forth, to secure the receipts and waivers of the legatees above mentioned of such persons as shall be authorized to receipt and waive for them, and to file said receipts and waivers herein.

Wherefore this administrator asks that this his report be approved and all of his doings as herein set forth be approved, and that he be authorized to make distribution of the balance of the funds remaining in his hands in accordance with the schedules above set forth; that he file the receipts and waivers of the legatees hereinbefore named, covering the respective shares of each or the receipt and waiver of such person or persons as shall be duly authorized to execute said receipts and waivers, and thereupon this report be finally approved as his final report in said matter, and that he be fully discharged, his bonds exonerated and said estate closed.

A. A. KUGLER,
Attorney for Administrators.

Duly verified.
Schedules attached.

7 Thereupon the residuary legatees Wilhelmina Elizabeth Peterson et al filed in said Court the following:

Objections to the Final Report of Administrator with Will Annexed.

Comes now Wilhelmina Elizabeth Peterson, Hans Peter Julius Hansen, Peter Christian Jorgensen, Hans Larsen, Niels Larsen, Karen Maria Christoffersen, Oline Nielsene Petersen, Ane Kirstine Sorensen, Haas Peter Jorgensen, Lars Larsen, Jens Peter Larsen, and Ane Sophia Petersen, and show to the court that they are the nephews and nieces of the decedent, Anne Margarethe Andersen, in the above entitled estate, and are residuary beneficiaries under the will of said decedent.

They show to the court that one C. L. Hansen, has been duly appointed by this court as administrator of the said estate of the said decedent, with the will annexed, and that the said administrator with the will annexed has taken possession of all of the property, moneys, effects of said decedent and after making disposition of the special bequests, as provided in said will, he has converted all of the said property into cash, as provided by the terms and conditions of said will.

That the real estate belonging to said decedent was of the value of $900.00 and the said administrator with the will annexed sold the same for said sum; and the value of the personal property and money left by the said decedent was $1652.97 and the said administrator with the will annexed has received the proceeds of the real estate, personal property and money of said decedent, a total of $2552.97, all of which is now in cash in the hands of said administrator with the will annexed and belongs absolutely to these residuary legatees under said will, and the said legatees are about to remove the same from the state of Iowa to the Kingdom of Denmark, where the said residuary legatees reside.

These legatees further show to the court that the administrator with the will annexed in the above entitled matter has filed
8 his final report in said matter from which it appears that the said administrator with the will annexed has paid to the Treasurer of the state of Iowa, as and for a collateral inheritance tax under the statutes of the state of Iowa, on the said sum of $2552.97, twenty per cent thereof, or the sum of $513.96; and the said administrator claims the right to with-hold the said sum from these residuary beneficiaries under the claim that it was his right and duty to pay the same to the Treasurer of the state of Iowa by virtue of the laws of said state.

These legatees show the court that the said statutes of the state of Iowa under which the said Treasurer of the said state claims the right to collect a collateral inheritance tax of twenty per cent on the inheritance going to these legatees is in contravention of the terms and provisions of a certain treaty entered into between the United States of America and the Kingdom of Denmark on the 26th day of April, 1826, and particularly in contravention of Article seven of the said treaty, which is in words as follows:

"Art. 7. The United States and his Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind

shall be levied in the territories or dominions of either party, upon any personal property, money, or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects, or otherwise than are or shall be payable in each State, upon the same, when removed by a Citizen or subject of such State, respectively."

Wherefore, these residuary legatees object to the final report of the administrator with the will annexed in the above entitled matter and pray that the same may be disapproved and not allowed by the court and that the said administrator with the will annexed be ordered and required by the court to pay over to these legatees all the money remaining, except only such amount as could legally be taxed against the same were these legatees, citizens and
9 residents of the State of Iowa and that said administrator with the will annexed be not discharged, nor his bond released, until he has performed the orders of said court in the premises and that the court make all such other and further orders as may be proper in the premises.

WILHELMINA ELIZABETH PETERSON, *et al.*

The United States of America also filed the following

Amended and Substituted Petition of Intervention.

Comes now the United States of America, by Fredrick F. Faville, United States Attorney for the Northern District of Iowa, and shows to the Court that he files this amended and substituted petition of intervention in behalf of the United States of America for the reasons hereinafter set forth and upon the suggestion of the Attorney General of the United States and at his request and by his direction, and this intervenor shows to the Court and alleges: That on or about the 16th day of September, 1909 one Anne Margarethe Anderson died in Mitchell County, and the State of Iowa and at the time of her death, the said decedent was a citizen and subject of the United States.

That the said decedent left a last will and testament by the terms of which she provided that all of her property real and personal should be converted into cash and, after the payment of certain special bequests, the residue should be divided among certain beneficiaries. A copy of said will is hereby attached and made a part hereof, marked "Exhibit A."

That the said residuary beneficiaries referred to in said will were the following nieces and nephews of the said testator to-wit:

Wilhelmina Elizabeth Petersen, Hans Peter Julius Hansen, Peter Christian Jorgensen, Hans Larsen, Niels Larsen, Karen Maria Christoffersen, Oline Nielsene Petersen, Ane Kirstine Sorensen, Hans Peter Jorgensen, Lars Larsen, Jens Peter Larsen, Ane Sophia Petersen.

10 This intervenor further alleges that at the time of the death of the decedent, the said residuary beneficiaries and each of

them were and they still are citizens, subjects and residents of the Kingdom of Denmark.

This intervenor further alleges that at the time of the death of said decedent, she was the owner of certain real estate described as lots One and Two (1-2) in Block Two hundred thirty (230) in the city of Osage, Iowa and which real estate was occupied by said decedent *at* a homestead at the time of her death, and was the owner of certain money and effects.

This intervenor alleges that one C. L. Hansen has been duly appointed by the court as administrator of the estate of the said decedent, with the will annexed, and that the said administrator, with the will annexed, has taken possession of all the property, moneys and effects of the said decedent and after making disposition of the special bequests provided in said will, has converted all of the said property into cash as provided by the terms and conditions of said will. That at the time of the death of the said decedent the said real estate was occupied by her as a homestead and was of the fair and reasonable value of $900.00 and was appraised by the Collateral Inheritance Tax Appraisers at said sum of $900.00 and the said administrator with the will annexed has sold the same under the terms of the said will and converted the same into cash in the sum of $900.00 and now holds the said sum of $900.00 in his hands for the use and benefit of the said residuary legatees.

This intervenor further alleges that the said decedent left other property, which the said administrator has reduced to money and the proceeds of which, together with the cash left by the said decedent aggregates $1,652.79 and the said administrator has now in his hands as the proceeds of the sale of said homestead, and the other property, effects and cash left by said decedent, a total of $2,552.97 in money, all of which now belongs absolutely to the residuary
11 legatees under said will and which said money the said beneficiaries are about to remove to the said Kingdom of Denmark.

This intervenor further alleges that the said administrator with the will annexed has filed his final report in the above entitled matter which is, by reference, made a part of this petition of intervention, the same as if set out herein, and from which report it appears that the said administrator has paid to the Treasurer of the State of Iowa as and for a collateral inheritance tax on the said sum of $2,552.79 twenty per cent thereof, or the sum of $513.96 and claims the right to withhold the same from the residuary beneficiaries under the claim it is his right and duty to pay the same to the said Treasurer of the State of Iowa because of the provisions of Section 1467 of the Supplement to the Code of Iowa.

This intervenor further alleges that on the 26th day of April, 1826 a convention of friendship, commerce and navigation was entered into between the United States of America and the King of Denmark, which said convention and treaty provided among other things as follows:

"Art. 7. The United States and his Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be

levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, or effects, or otherwise than are or shall be payable in each State, upon the same, when removed by a citizen or subject of such state, respectively."

This intervenor alleges that the said Statute of the State of Iowa is in conflict with the said Article 7 of the said convention between the United States of America and the King of Denmark and the collection and payment of the said tax of twenty per centum on
12 the money of said beneficiaries derived from the said decedent *in* contrary to and in violation of the terms and provisions of the said article 7 of the said convention and treaty.

Wherefore, this Intervenor prays that in order that the international obligations of the United States may be fully discharged and that the rights of the said subjects of the King of Denmark, under the said convention and treaty, may be protected and preserved, that the United States may, by order of the Court, be permitted to file this Amended and Substituted Petition of Intervention in this cause, and may be made a party to this action, and may join with the said legatees above named in resisting and opposing the claim of the Treasurer of the State of Iowa to the said tax and that upon hearing of said matter, the said final report of the said administrator with will annexed in the above entitled matter, may be rejected and disallowed and approval thereof may be refused by the Court and that the said tax of twenty per centum on the money of said beneficiaries so derived from said decedent, may be held by the court to be illegal, invalid and void; and that it may be adjudged by the court that the said statute of the State of Iowa is in conflict with the terms and provisions of the said convention and treaty between the United States of America and the King of Denmark and subordinate to the provisions of said treaty; and that the said administrator be ordered and directed by the court to make full distribution of the money coming into his hands as such administrator to the said beneficiaries without deducting therefrom the said tax of twenty per centum or any higher or other charge or tax *then* could be lawfully levied thereon, if the said beneficiaries were citizens, subjects and residents of the United States, and that the Court make such other and further orders as may be proper in the premises.

FREDERICK F. FAVILLE,
United States Attorney for the Northern District of Iowa.

13 *Last Will and Treaty of Anne Margrethe Andersen.*

In the Name of God Amen.

I Anne Margrethe Andersen, Widow of Christen Andersen deceased, of Osage, Mitchell County, Iowa, being of full age and sound mind and memory and free to act.—I fully realize the uncertainty of this Life, and wish and declare that my last Will and Testament,

and I hereby revoke and nullify any and all former wills which I may have made.

After all my just debts are paid, such as may have been caused by sickness—Funeral expenses—Legal Court costs and compensation to my appointed Executor—or from any other just cause—I wish the remainder of my worldly possessions to be distributed as follows:

First. If a monument is not erected before I die, I wish a suitable one erected over the remains of my husband and myself to cost about $100.00.

Second. I give and bequeath $50.00 to the "Santal Missions."

Third. I give and bequeath $25.00 to the "Lutheran Orphan Home" at Beloit, Iowa. The two last Items to be in the charge of the Lutheran Minister of Osage, Iowa.

Fourth. I give and bequeath $25.00 to the "Osage Cemetery Association" of Osage, Iowa.

Fifth. I give and bequeath to my friend Mrs. Guda Goldberg my heating stove with baking oven—one bedstead with springs and Mattress and Bed-clothes complete—one of my Rocking Chairs, of which she is to have her choice.

Sixth. All the rest of my Household furniture, including Carpets and Curtains and all utensils and Tools, I give and bequeath to my kind neighbor Mrs. N. A. Miller.

Seventh. All the rest of my Estate, Real and personal, consisting of my Homestead situate on Lots No's. One (1) and Two (2) in Block Two Hundred Thirty (230) in the city of Osage, Iowa, and Moneys and Credits I wish to give and hereby give and be-
14 queath to the children of my Brother, Hans Hansen, late of Copenhagen, Denmark—deceased, and the children of my two Sisters Bodil and Karen, both deceased—late of Denmark.

I wish to and hereby appoint H. S. Houg, of Osage, Iowa, to be Executor and of this my last Will and Testament, without giving Bond—and desire him in due time to sell my Homestead to the highest and best bidder for cash or good bankable papers, and as soon as possible have all my property real and personal converted into Cash and divided the same into three equal shares, and pay one share to the Children of my Brother Hans Hansen, and one Share to the Children of my Sister Bodil and one Share to the Children of my Sister Karen heretofore named herein.

This my last Will and Testament is executed and signed by me in the presence of H. S. Houg, and C. Larsen both of Osage, Iowa, whom I have requested to be present and witness my signature.

Osage, Iowa, March 25th, 1909.

ANNE MARGARTHE ANDERSEN.

The foregoing instrument, purporting to be the last Will and Testament of Anne Margrethe Anderson, Widow of Christene Anderson, late of Osage, Iowa, was signed by her in our presence, and in the presence of each other, we being present at her request, and we hereby certify that we firmly believe that at the time of her signing the same she was of sound mind and memory, and free to act and she stated to us that the foregoing Instrument consisting of three sheets

numbered 1-2-3 is her last Will and Testament freely and voluntarily executed.

Witness our hand at Osage, Iowa, this 25th day of March, A. D. 1909.

C. LARSON, *Residing at Osage, Iowa.*
H. S. HOUG, *Residing at Osage, Iowa.*

Thereupon the State of Iowa filed the following

Demurrer to Amended and Substituted Petition of Intervention.

Come now the State of Iowa and W. W. Morrow, Treasurer of the State of Iowa, by A. A. Kugler, County Attorney of Mitchell
15 County, Iowa and demurs to the amended and substituted petition of intervention filed herein by the United States of America, and on the following grounds:

1st. That the allegations of said petition of intervention do not entitle said intervenor to the relief demanded, nor to any relief whatever.

2nd. That the said United States of America is not a party in interest in the matter involved in the proceedings.

3rd. That it appears that the provisions of the treaty set forth in said petition of intervention are not applicable to the case at bar.

4th. That it appears that the treaty as set forth in said petition of intervention does not apply to the property of a citizen or subject of either of the contracting powers, residing at home and disposing of property there to citizens or subjects of the other party.

5th. That it appears that the provisions of said treaty apply only to the property of a subject of one of the contracting powers, living within the territory of the other, and possessed of property there which is desired to remove, or which their heirs may inherit.

6th. That the provisions of said treaty provided for the removal of personal property, money, and effects by the owner thereof, upon the payment of such duties as would be paid by citizens or subjects of the State from which said properties are to be removed, meaning that a subject of Denmark, owning property in the United States of America, may remove it upon the payment of the same duties as a subject of the United States.

7th. That the terms of said treaty were not intended to apply to a case in which a citizen or subject of the respective countries, residing at home and disposing of property there in favor of a citizen or subject of the other country, and such a case is not embraced in the article of said treaty as set forth in said petition of intervention.

16 8th. The provisions and terms of said treaty are not and can not be extended to apply to the inheritance of property not included within the scope of the treaty, applicable to the removal of personal property, money and effects.

9th. That the collateral inheritance tax of 20 per cent assessed against and collected by the Treasurer of the State of Iowa from the personal property, money and effects belonging to the above

named estate, is authorized by the law of the State of Iowa, and is not in violation and contravention of any of the provisions of the treaty between the United States of America and the Kingdom of Denmark.

10th. That the collateral inheritance tax of 20 per cent assessed against and collected by the Treasurer of the State of Iowa, from the real estate belonging to the above estate, is authorized by the law of the State of Iowa, and is not in violation or contravention of any of the terms and provisions of the treaty between the United States of America and the Kingdom of Denmark.

11th. That the collateral inheritance tax of 20 per cent assessed against and collected by the Treasurer of the State of Iowa from both the personal property, money and effects, and the real estate belonging to the above estate, is authorized by the law of the State of Iowa, and is not in violation or contravention of any of the terms or provisions of the treaty between the United States of America and the Kingdom of Denmark.

12th. That the provisions of said treaty clearly relates to personal property, money and effects belonging to the citizen of one of the contrasting parties, which property may be located within the territory of the other contracting party, and passes as an inheritance to subjects of the country of which the owner of said property, money or effects is a subject and a citizen, and relates merely to the removal of said property from the country of its location.

17 13th. That the provisions of the statutes of the State of Iowa authorizing the assessment and collection of a collateral inheritance tax against the property of decedent, at the rate of 20 per cent are not — conflict with the treaty between the United States of America and the King of Denmark, and the assessment and collection of said tax by the Treasurer of the State of Iowa is not contrary to, or in violation of any of the terms or provisions of said article Seven of said treaty.

14th. That the collateral inheritance tax of 20 per cent authorized by the Statutes of the State of Iowa, and which was assessed against and collected from the estate of decedent, is a tax on the succession of said estate, while the provisions of said treaty clearly relate to the removal of property only and not to the succession thereof.

A. A. KUGLER,

County Attorney and Attorney for State of Iowa and
W. W. Morrow, Treasurer of the State of Iowa.

Thereafter said issues were presented to the court and on August 9th, 1912, the Court duly caused to be entered of record in said matter the following,

Order of Court.

This is a proceeding in probate to close the estate of the decedent, Mrs. Andersen. She died testate in said county September 16, 1909, being a citizen and resident of the County at the time. Her will was duly probated. The executor named therein died before

the estate was closed and C. L. Hansen was appointed administrator with the will annexed. He has made his final report and asks to be discharged upon making distribution as provided in the will. The estate consisted of a house and lots in Osage and certain personal property. Decedent was a widow without direct issue at the time of her death. The will provides for payment of debts and legal charges, makes some small devises not involved in this action,
and directs the executor to sell the real estate and pay the
18 remaining proceeds of the real and personal estate to the
sons and daughters of two deceased sisters and a deceased brother, all of whom are citizens and residents of Denmark. The executor died without selling the real estate. The Administrator with the will annexed made the sale under order and approval of the Court. The Treasurer of State claims a collateral inheritance tax of 20 per cent on the net proceeds going to the beneficiaries in Denmark because of the fact that they are non-resident aliens, and the final report is made upon that basis. They have filed written objections to the payment of more than 5 per cent tax, and base their claim on Article Seven of the "Treaty of Friendship, Commerce and Navigation" entered into by the United States and Denmark in 1826. The only copy of that treaty to which I have access is the volume entitled "Treaties and Conventions Concluded between the United States of America and other Powers," printed at the Government printing office in 1889, at pages 230-235. Article Seven is as follows, "The United States and His Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects, or otherwise, than are or shall be payable in each State upon the same, when removed by a citizen or subject of such State, respectively."

The United States Attorney for the Northern District of Iowa has filed a petition of intervention on the part of the United States making the same claims under the treaty as made by the foreign beneficiaries in their objections to the payment of more than a 5 per cent collateral inheritance tax. The Treasurer of the State has demurred to the petition of intervention and therein challenges the right of the United States to make intervention because of want
of sufficient legal interest in the controversy. The conclu-
19 sion which I have reached on the merits of the controversy
makes it unnecessary for me to decide whether or not the United States has sufficient interest to authorize intervention. But I have considered all the arguments and authorities presented the same as I would if the right to intervene were not questioned.

The language of Article Seven of the treaty in question is extremely vague and uncertain. In such cases it is the law as stated by Justice Field in Geofry v. Riggs, 133 U. S. 258, 271, 33 L. Ed. 642, 646. "It is a general principle of construction with respect to treaties that they shall be liberally constructed so as to carry out

the apparent intention of the parties to secure equality and reciprocity between them." Applying this principle of construction can it be reasonably said that the parties to the treaty in question intended that Article Seven should apply to the rights of citizens or subjects of one nation to inherit or take by will from citizens or subjects of the other? Nothing is said in the title or enacting clause of the treaty in reference to inheritance or succession. Nor is anything said on these subjects in Article Seven except the words "either upon the inheritance of such property, money or effects or otherwise." Standing alone this clause gives color to the claims of the foreign beneficiaries. But considered with the other language of the Article and of the entire treaty the construction favoring the claims of the objectors does not seem warranted or reasonable. The clause quoted when considered with all the rest of the treaty seems more reasonably to mean, "whether the owner acquired such property, money or effects by inheritance or otherwise." All other portions of the article appear to treat of the removal of property of the kind stated from the territory of one of the contracting nations by the owner thereof when he is a citizen or subject of the other nation and residing outside the country from which the property is removed. The words "Removal" and "Removed" are found just before and just after the clause quoted. And that clause seems to be parenthetical in its construction. The whole Article seems to treat of the subject of removal of property from the dominion of one of the contracting parties and not of the right of succession or inheritance. My conclusion is that Article Seven of the treaty in question does not apply to the controversary herein.

The objections of the beneficiaries under the will of the decedent to the final report of the Administrator with the will annexed are overruled, to which each *each* of them excepts. The Demurrer of the Treasurer of State to the Petition of Intervention of the United States is sustained. The United States except. It declines to plead further and gives notice that it elects to stand upon the ruling on the demurrer.

The final report of the Administrator with the will annexed is approved. He is directed to pay to the Treasurer of State a Collateral inheritance tax of 20 per cent of the portion of the estate going to the non-resident alien beneficiaries under the will of the decedent and make distribution of the remainder to them as provided in the will. All parties except.

Dated Osage, Iowa, August 9th, 1912.

J. F. CLYDE, *Judge*.

Thereafter, to-wit: on or about the 15th day of January, 1913, the said objectors and the said intervenor, the United States, caused to be duly and legally served upon the Clerk of the District Court of Iowa, in and for Mitchell County, and upon the Attorney of record for the administrator in said estate, and upon the Attorney of record for the State of Iowa, ex rel the State Treasurer, a good and sufficient

Notice of Appeal

as follows:

To A. D. Smith, Clerk of the District Court of Iowa in and for Mitchell County and to A. A. Kugler, Attorney of Record for the administrator in the above entitled estate and for the State of Iowa, and W. C. Brown, State Treasurer:

You and each of you are hereby notified that the United States of America, intervenor in the above entitled cause, and Wil-
21 helmina Elizabeth Peterson, Hans Peter Julius Hansen, Peter Christien Jorgensen, Hans Larsen, Neils Larsen, Karen Maria Christoffersen, Oline Nielsene Petersen, Ane Kirstine Sorensen, Hans Peter Jorgensen, Lara Larsen, Jens Peter Larsen and Ane Sophia Peterson; beneficiaries and objectors, have appealed from the order and judgment of the District Court of Iowa, in and for Mitchell County in the above entitled matter rendered on or about the 9th day of August, 1912, to the Supreme Court of Iowa, and that said matter will come on for hearing before said court at the Capitol in Des Moines, Iowa, at the time and in the matter provided by law.

FREDERICK F. FAVILLE,
United States Attorney for the Northern District of Iowa, Attorney for Intervenors.
WILHELMINA ELIZABETH PETERSEN,
PETER CHRISTIAN JORGENSEN,
KAREN MARIE CHRISTOFFERSEN,
ANE KIRSTINE SORENSEN,
LARS LARSEN,
ANE SOPHIA PETERSEN,
HANS PETER JULIUS HANSEN,
HANS LARSEN,
NIELS LARSEN,
OLINE NIELSON PETERSEN,
HANS PETER JORGENSEN,
HANS PETER LARSEN,
By GEORGE BEET,
Royal Danish Consul in Chicago,
Their Attorney in Fact.

Due, legal, timely and sufficient service of the foregoing notice of appeal is hereby acknowledged this 15th day of January, 1913.

[SEAL.] A. D. SMITH,
Clerk of the District Court of Iowa, in and for Mitchell County.
A. A. KUGLER,
Attorney of Record for the Administrator in the Above-entitled Estate.
A. E. BROWN,
County Attorney Mitchell County, Iowa for the State of Iowa and W. C. Brown, State Treasurer.

On said date the appellants secured said Clerk his fees for a transcript. Said Notice of Appeal was duly filed with the Clerk of the District Court of Mitchell County, Iowa.

We hereby certify that the foregoing abstract of record contains all of the record in said cause in any way material to the question presented by this appeal.

22 BASTRUP AND O'NEIL,
Attorneys for Wilhelmina Elizabeth Petersen, et al, Legatees and Appellants.
FREDERICK F. FAVILLE,
Attorney for the United States, Intervenor and Appellant.

We hereby certify that the actual cost of printing the foregoing abstract is $15.60 and that the same has been paid by the appellants.

BASTRUP AND O'NEIL,
Attorneys for Wilhelmina Elizabeth Petersen, et al, Legatees and Appellants.
FREDERICK F. FAVILLE,
Attorney for the United States, Intervenor and Appellant.

23 SUPREME COURT OF IOWA, STATE OF IOWA, *ss:*

Be it remembered, That on the 11th day of November, A. D. 1913, the following proceedings, among others, were had in the Supreme Court of Iowa, to-wit:

Appeal from Mitchell District Court.

Est. ANNA M. ANDERSON, etc., App'l'nt.
vs.
C. L. HANSEN, Adm'r etc.

This cause is submitted on abstracts and arguments on file.

I hereby certify that the foregoing is a full, true and complete copy of the record entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 13th day of August, A. D. 1915.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT, *Clerk,*
By J. V. ARONEY, *Deputy.*

24 SUPREME COURT OF IOWA, STATE OF IOWA, *ss:*

Be it remembered, That on the 29th day of June, A. D. 1914, the following proceedings, among others, were had in the Supreme Court of Iowa, to-wit:

Appeal from Mitchell District Court.

In the Matter of the Estate of MARGARETHE ANDERSON, Dec'd; Whelmina Elizabeth Peterson, et al., Legatees and App'l'nts; The United States, Intervenor and App'l'nt,

vs.

C. L. HANSON, Adm'r and Appellee; State of Iowa ex Rel. The State Treasurer, Claimant and Appellee.

In this cause the Court being fully advised in the premises file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below and it is hereby affirmed, and that a writ of procedendo issue accordingly.

It is further considered by the Court that the Appellants pay the costs of this appeal, taxed at $— and that execution issue therefor.

I hereby certify that the foregoing is a full, true and complete copy of the judgment entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 13th day of August, A. D. 1915.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT, *Clerk*
By J. V. FARNEY, *Deputy*.

25 [Endorsed:] No. —. In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen et al., Plaintiffs in Error, vs. The State Treasurer of the State of Iowa et al., Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa. Transcript of the Record. Hugh O'Neil, Attorney for Plaintiffs in Error.

26 In the Supreme Court of Iowa.

(Filed June 29th, 1914.)

In the Matter of the Estate of ANNA MARGRETHE ANDERSON, Deceased; Whelmina Elizabeth Peterson, et al., Legatees and Appellants; The United States, Intervenor and Appellant; C. L. Hanson, Administrator and Appellee; The State of Iowa, ex Rel. the State Treasurer, Claimant and Appellee.

583-29,248.

Appeal from the District Court of Mitchell County.

J. F. Clyde, Judge.

Anna Margrethe Anderson died testate Sept. 16, 1909. Her will was probated and H. S. Hoüg appointed executor. The latter dying

C. D. Hanson was appointed administrator with the will annexed. On Nov. 22, 1911, he filed his final report disclosing that after paying debts, costs of administration and specific legacies there remained of the proceeds of the personal property in his hands $1652.97 and of the realty, which the will directed to be converted into cash, $900. A collateral inheritance tax with interest amounting to $513.96 was paid to the treasurer of the state leaving $2074.24 to be distributed under the residuary clause of the will per stirpes to the children of a deceased brother and two sisters, all residents of the Kingdom of Denmark. The legatees objected to the final report on the ground that no greater inheritance tax might be exacted than were they citizens of the State of Iowa and the United States by way of petition of intervention, raised the same objection, averring that the legatees were citizens and subjects of the Kingdom of Denmark. The State of Iowa and its Treasurer demurred to this petition and the demurrer was sustained. The objections of the legatees also were overruled and the final report approved. The United States and the legatees appeal.

Bastrup & O'Neill for Whelmina Elizabeth Peterson, et al., Appellants.

27 A. Van Wagenen for the United States, Appellant.

A. E. Brown for the State, Appellee.

A. A. Kugler for C. L. Hanson, Administrator, Appellee.

Ladd, *C. J.*:

The decedent at the time of her death was a resident and citizen of Iowa. Being childless, she left the bulk of her estate to the children of a deceased brother and two sisters all of whom were then resident of Denmark and subjects of that Kingdom. In his final report the administrator with the will annexed credited himself with $513.96 paid the treasurer of the state as inheritance tax, being 20 per cent of the portion of the estate to be distributed to the above legatees, in pursuance of Section 1467 of the Code as amended. This statute reads:

"All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a descendant, step-child, or the lineal descendant of a step child of a decedent, or to or for charitable, educational or religious societies or institutions, including hospitals, public libraries, and public art galleries kept open to the free use of public not less than three days of each week; within this state, shall be subject to a tax of five per centum of its value, above the sum of one thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees and any

such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively except as herein otherwise provided, with lawful interest as herein
28 after set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of decedent until paid. Whenever property, or any interest therein shall pass to the heirs, devisees, or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, nonresidents of the United States, the same shall be subject to a tax of twenty per centum of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum of the value of the property or interest so passing."

The objection of the legatees as well the government of the United States is that though payment by the administrator was in accordance with the above statute, the exaction of more than five per cent was in violation of the treaty rights of the legatees. The treaty in question was concluded Apr. 26, 1826, and renewed in 1857. Its main concern was with commerce and navigation. In the first article, the high contracting parties stipulated not to grant any particular "favors to other nations in respect to commerce and navigation, which shall not immediately become common to the other party who shall enjoy the same freely, if the concession were freely made, or on allowing the same compensation if the concession were conditional." Article 2 permits the citizens of each to visit the coasts and reside and trade in the other. Articles 3 and 4 relate to the carriage in the vessels of the respective parties and the imposition of duties. Article 5 has been abrogated and 6 excludes the application of the treaty from certain colonies. Article 7 reads:

"The United States and His Danish Majesty mutually agree that no higher or other duties charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, effects or otherwise than are or shall be payable in
29 each state, upon the same, when removed by a citizen or subject of such States respectively."

The articles following relate to the designation of consuls and vice consuls the privilege and rights they are to enjoy, their exemptions, the term of the treaty and its ratification. It is plain from this recital that the favored nation clause, being limited to commerce and navigation, can not be permitted to expand the terms of the 7th Article and that the context is of no aid in the interpretation of that article. Of course, the statute must yield to the terms of this article if in conflict therewith. Opel v. Shoup, 100 Iowa 407. Doehrel v. Hilmer, 102 Iowa, 169.

Treaties "are to be liberally construed so as to carry out the apparent intention of the parties to secure equality and reprocity be-

tween them. As they are contracts between independent nations in their construction words are to be taken in their ordinary meaning, as understood, in the public law of nations, and not in any artificial or special sense imposed upon them by local law, unless such restricted sense is clearly intended. And it has been held by this court that where a treaty admits of constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred."

Geofroy vs. Riggs, 133 U. S., 258, at 271.

It will be noted that discrimination is to be avoided in charges or taxes levied "upon any personal property, money or effects." As to whether the word "effects" should be construed to include real estate need not be determined, the point not having been raised by assignment or briefed in the statement of points. It is to be observed, however, that in a somewhat similar connection, it has been construed, in an elaborate opinion, to mean land as well as personalty, in Adams v. Akerlund, 168 Ill. 632; 48 N. E. 454, and this was followed Stixrud vs. State, 58 Wash. 339; 109 Pac. 30 343. A different view seems to have been entertained in Meier vs. Lee, 106 Iowa, 303, though apparently without reverting to many authorities. The collateral inheritance tax is not levied upon any of these. The authorities are agreed that this is neither a property nor a personal tax. It is referred to in Herriott v. Bacon, 110 Iowa, 342 as "the tax on the succession to property." The Annotator in his note to Re. Estate of McKennan, 33 L. R. A. N. S. 606, says: "The overwhelming weight of authority supports the rule that such tax is a bonus in the nature of an excise or duty exacted by the state for the privilege granted by its laws of inheriting or succeeding to property on the death of the owner."

Several definitions are cited in the note and in view of Whiting, J., expressed in the main case, "it is not a tax upon the right to inherit or to succeed nor upon the right to transmit but a tax upon the exercise of such right-upon the transmission of property." In the majority of opinion, however, it is said that "it is the succession or transmission or receipt of property occasioned by death that is subject to the tax." Though the matter of nomenclature is not very important, it is to be observed that the view of Whiting, J., seems to be in accord with Knowlton v. Moore, 178 U. S. 121; 44 L. Ed. 969, where it is said "The tax is on the passing of legacies or distributive shares of personalty." After reviewing the authorities somewhat, that court concluded: "Thus, looking over the whole field, and considering death duties in the order in which we have reviewed them,—that is, in the Roman and ancient law, in that of modern France, Germany and other continental countries in England and those of her colonies where such laws have been enacted, in the legislation of the United States and the several states of the Union,—the following appears: Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy,

taxes, estate taxes, or privilege taxes, nevertheless tax laws
31 of this nature in all countries rest in their essence upon the principle that death is the generating source which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more particularly rested."

A like opinion was rendered in U. S. V. Perkins, 163 U. S. 625 41 L. Ed. 287. One Merriain had devised and bequeathed all his property to the government and an inheritance tax was assessed by the property officers of New York which the courts there confirmed. On appeal, the supreme court of United States, speaking through Brown, J. held that "In this view, the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain but subject to a condition that the state has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the state, that it becomes the property of the legatee."

After quoting from decisions from Maryland and New York that the tax is upon the transmission, the court concluded: "We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature asset-s to a bequest of it."

32 This is in harmony with the method of levying and collecting the inheritance tax in this State. Sections 1475, 1477, 1480. The tax is deducted by the executor or administrator from the legacy or share of the lat*t*eral heir or legatee and paid by him to the State Treasurer. As held in the case last cited, the portion exacted as a tax never reaches the person taking the estate as his property and therefore the language of the treaty was not applicable thereto. The statute may well be construed as regulating the transmission of the property of deceased persons and independent of treaty right, neither the unwritten law nor the constitution prohibits discrimination between citizens and foreigners in these respects. The precise question involved was determined in Frederickson v. Louisiana, 64 U. S. 445; 16 L. Ed. 577. There, the discrimination was against "each and every person, not being domiciled in this state and not being a citizen of any other state or territory in the Union, and while saving that *this* described citizens of Louisiana residing abroad as well as subjects of the Kingdom of

Wurtenberg, and therefore was not discrimatory, the court concurred with the supreme court of Louisiana "in the opinion that the treaty does not regulate the testamentary dispositions of citizens or subjects of the contracting powers, in reference to property within the country of their origin or citizenship. The cause of the Treaty was, that the citizens and subjects of each of the contracting powers were or might be subject to onerous taxes upon property possessed by them within the States of the other, by reason of their alienage, and its purpose was to enable such persons to dispose of their property, paying such duties only as the inhabitants of the country, where the property lies, pay under like conditions. The case of a citizen or subject of the respective countries residing at home, and disposing of property there in favor of a citizen or subject of the other, was not in the contemplation of the contracting powers, and is not embraced in this article of the Treaty. This view of the treaty disposes of this cause upon the grounds on which it was determined in the Supreme Court of Louisiana."

33 The treaty there considered though not worded like that in question was of similar import and the decision must be regarded as decisive of this case. The language of the treaties construed in Succession of Rixner, 48 La. Ann. 552; 32 L. R. A. 177 and in Re Estate of Stixrud, 58 Wash. 339; 33 L. R. A. N. S. 632, was such as to differentiate the cases from that before us. The court, as we think, rightly adjudged the statutes relating to the exaction of an inheritance tax not in conflict with the provisions of the treaty with Denmark.

Affirmed.

Deemer, Weaver, Gaynor and Withrow, JJ., concur.

34 UNITED STATES OF AMERICA.
State of Iowa, ss:

In the Supreme Court of Iowa, June Term, A. D. 1915.

No. —.

WILHELMINA ELIZABETH PETERSON et al. Legatees of the Estate of Anna Margrethe Anderson, Deceased, Plaintiffs in Error,

vs.

THE STATE TREASURER OF THE STATE OF IOWA, and C. L. HANSON, Administrator with the Will Annexed, of the Estate of Anna Margrethe Anderson, Deceased, Defendants in Error.

Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa.

Præcipe for Record.

To the Honorable B. W. Garrett, Clerk of the Supreme Court of Iowa:

You will please prepare a Transcript of the Record in the above entitled cause, to be filed in the office of the Clerk of the Supreme

Court of the United States in compliance with the commands of the Writ of Error heretofore sued out by said Appellants and include in said transcript copies of the following:

Writ of Error allowed by Chief Justice of Supreme Court of Iowa, with all endorsements thereon.

Citation to above named Appellants with endorsements thereon.

35 Bond.

Entire Record of trial court filed in the Supreme Court of Iowa.

HUGH O'NEILL,
Attorney for Plaintiffs in Error.

36 [Endorsed:] No. —. In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al Plaintiffs in Error vs. The State Treasurer of the State of Iowa et al Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Iowa. Praecipe for Record. Filed Nov. 11, 1915. B. W. Garrett, Clerk Supreme Court. Hugh O'Neill, Att'y for Plaintiffs in Error.

37 UNITED STATES OF AMERICA,
State of Iowa, ss:

In the Supreme Court of Iowa, June Term A. D. 1915.

No. —.

WHELMINA ELIZABETH PETERSEN, et al., Legatees of Anna Margrethe Anderson, Deceased, Plaintiffs in Error,
vs.
THE STATE TREASURER OF THE STATE OF IOWA and C. L. HANSON, Administrator, with the Will Annexed, of the Estate of Anna Margrethe Anderson, Deceased, Defendants in Error.

Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Iowa.

Petition for a Writ of Error, Returnable to the Supreme Court of the United States.

To the Honorable the Chief Justice of the Supreme Court of Iowa.

Now come your Petitioners, Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christoffersen and Anna Sofie Petersen, by Bent Falkenstperne, their Attorney in Fact, Legatees of the Estate of Anna Margrethe Anderson, Deceased, by Hugh O'Neill, their Attorney, and represent and show to this

Court that on, to-wit: the Twenty-ninth day of June, A. D. 1914, and of the June Term thereof, this, the Supreme Court of
37 Iowa, handed down its opinion and rendered its decision and entered judgment against your Petitioners in the above entitled cause, which cause was then pending before this Court, and wherein your Petitioners were Appellants, and the State Treasurer of the State of Iowa et al were Appellees.

That by holding a Statute imposing a higher succession tax in case of property going to non-resident aliens, than in case of that going to citizens does not violate a Treaty, declaring that no higher tax of any kind shall be levied upon the property or effects of the respective subjects of the contracting parties on the removal of the same from the domains of the parties reciprocally, either upon the inheritance of such property or otherwise than is or shall be payable in each State upon the same when removed by a citizen or subject thereof—sustained the judgment of the District Court of Iowa, in and for Mitchell County, which overruled the objections of your Petitioners, the beneficiaries under the Will of the Decedent, to the Final Report of the Administrator with the Will annexed, to which ruling your Petitioners excepted, and which approved the Final Report of the Administrator with the Will annexed, and which directed him to pay to the Treasurer of State a Collateral Inheritance Tax of twenty-per cent of the portions of the Estate going to non-resident aliens, beneficiaries under the Will of the Deceased, to which your Petitioners objected: And that said Judgment became a final decision and judgment of this Court affirming the Decree of the District Court of Mitchell County, Iowa, in favor of the State Treasurer of Iowa, and against your Petitioners.

39 That this, the Supreme Court of Iowa, is the highest Court of Law and Equity in the State of Iowa, in which a Decision of said cause can be had, and that in this Court the said Final Judgment was rendered against your Petitioners, as above set forth, and that the record of this cause is now presented, from which said record it appears, and your Petitioners represent and show to this Court and to the Honorable the Chief Justice thereof as follows, to-wit:

That on the trial of said cause in the said District Court of Mitchell County, and in the review of the Decree of said Court and in the proceedings in this cause before this Honorable Court, there was set up by your Petitioners and drawn in question and finally, by the Judgment of this Court, decided adversely to your Petitioners and their contention, the Treaty rights of the Legatees, your Petitioners, under the Treaty of Friendship, Commerce and Navigation, entered into by the United States and Denmark in 1826, (8 Stat. at L. 340) and renewed in 1857 (11 Stat. at L. 719), which Treaty provides in the first Article that the said contracting parties stipulated not to grant any particular favors to other Nations in respect to Commerce and Navigation, which shall not immediately become common to the other party, who shall enjoy the same freely as if the concession were freely made or on allowing the same compensation as if the concession were conditional. And Article 7 provides that:

"The United States and his Danish Majesty mutually agree, that no higher or other duties, charges, or taxes of any kind, shall
40 be levied in the territories or dominions of either party, upon any personal property, money or effects, of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects or otherwise, than are or shall be payable in each state, upon the same, when removed by a citizen or subject of such states respectively."

That Section 1467 of the Code of Iowa, Supp. 1907, as amended, which is as follows:

"All property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this State or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a descendant, stepchild, or the lineal descendant of a stepchild of a decedent or to or for charitable, educational or religious societies or institutions, including hospitals, public libraries and public art galleries kept open to the free use of the public not less than three days of each week, within this state, shall be subject to a tax of 5 per centum of its value, above the sum of $1,000, after the payment of all debts, for the use of the state; and all administrators, executors and trustees and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. Whenever property, or any interest therein, shall pass to heirs, devisees, or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, non-residents of the United States, the same shall be subject to a tax of 20 per centum of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be 10 per centum of the value of the property or interest so passing."

exacts more than five percentum succession on property going to the Petitioners, non-resident aliens in the Kingdom of Denmark and was in violation of the Treaty rights of the Legatees, the Petition-
41 ers, under the Treaty as aforesaid, and the aforesaid Laws of Iowa and said exaction thereunder were also in violation of Section Second, Article VI. of the Constitution of the United States.

That in adjudging Section 1467 of the Code of Iowa, Supp. 1907 as amended, relating to the exaction of an inheritance tax as not in conflict with the provisions of the Treaty with Denmark, concluded April 26, 1826, (8 Stat. at L. 340) and renewed in 1857 (11 Stat.

at L. 719), the validity of said Section 1467 of the Code of Iowa, Supp. 1907, was finally decided adversely to your Petitioners and their contentions by this, the Supreme Court of Iowa, and that in said final decision and judgment and the proceedings of this Honorable Court in said cause, certain errors were committed to the prejudice of your Petitioners, which said errors will more fully appear from the Assignment of Errors filed herein with this Petition.

That as appears from the said Assignments of Errors and from the matters and things above set forth, the final decision and judgment of this Honorable Court will deprive your Petitioners of their rights under the aforesaid Treaty and Section Two, Article VI. of the Constitution of the United States; all of which more fully appears from the record and proceedings in the same.

Wherefore, your Petitioners pray that a Writ of Error may be issued in their behalf in this Court returnable unto the Supreme Court of the United States, for the correction of the errors complained of by your Petitioners; that a Bond may be approved and
42 filed herein by your Petitioners in accordance with the statute governing such proceedings; that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to the Supreme Court of the United States.

WHELMINA ELIZABETH PETERSEN,
OLINE NIELSINE PETERSEN,
HANS PETER JULIUS HANSEN,
ANE KRISTINE SORENSEN,
PETER CHRISTIAN JORGENSEN,
HANS PETER JORGENSEN,
HANS LARSEN,
JENS PETER LARSEN,
LARS LARSEN,
NIELS LARSEN
KAREN MARIE CHRISTOFFERSEN AND
ANNA SOFIE PETERSEN,
Petitioners.

By BENT FALKENSTJERNE,
Their Attorney in Fact.

By HUGH O'NEILL,
Their Attorney.

Allowed this 15th day of November A. D. 1915.

HORACE E. DEEMER, *Chief Justice Supreme Court of Iowa.*

43 [Endorsed:] No. —. In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al., Plaintiffs in Error, vs. The State Treasurer of the State of Iowa et al., Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Iowa. Petition for a Writ of Error, Returnable to the Supreme Court of the United States. Filed Nov. 11, 1915. G. W. Garrett, Clerk Supreme Court. Hugh O'Neill, Att'y for Plaintiffs in Error.

44 UNITED STATES OF AMERICA,
State of Iowa, ss:

In the Supreme Court of Iowa, June Term, A. D. 1915.

No. —.

WHELMINA ELIZABETH PETERSEN, et al., Legatees of the Estate of Anna Margrethe Anderson, Deceased, Plaintiffs in Error,
vs.
THE STATE TREASURER OF THE STATE OF IOWA AND C. L. HANSON, Administrator With the Will Annexed, of the Estate of Anna Margrethe Anderson, Deceased, Defendants in Error.

Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa.

Assignment of Errors.

Now come Whelmina Elizabeth Peterson, et al., Legatees of Anna Margrethe Anderson, Deceased, by Hugh O'Neill, their Attorney and with their petition for a Writ of Error returnable to the Supreme Court of the United States file this, their Assignment of Errors, and say that in the record and proceedings in the above entitled cause there is manifest error in this:

45 1. The Judgment of the Supreme Court of the State of Iowa sustained the Judgment of the District Court of Iowa in and for Mitchell County, which overruled the objections of these Petitioners, the Beneficiaries under the Will of the decedent to the Final Report of the Administrator with the Will annexed in contravention of Article 7 of the Treaty of Friendship, Commerce and Navigation, entered into by the United States and Denmark in 1826 (8 Stat. at L. 340), and renewed in 1857 (11 Stat. at L. 719), which is as follows:

"The United States and his Danish Majesty mutually agree, that no higher or other duties, charges, or taxes of any kind, shall be levied in the territories or dominions of either party, upon any personal property, money or effects, of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money or effects or otherwise, than are or shall be payable in each state, upon the same, when removed by a citizen or subject of such states respectively."

2. The Judgment of the Supreme Court of the State of Iowa sustained the Judgment of the District Court of Iowa in and for Mitchell County, which overruled the objections of these Petitioners, the beneficiaries under the Will of the Decedent to the Final Report of the Administrator with the Will annexed in contravention of the First Article of the Treaty of Friendship, Commerce and Navigation, entered into by the United States and Denmark in 1826 (8 Stat. at L. 340) and renewed in 1875 (11 Stat. at L. 719), which stipulates

not to grant any particular favors to other nations in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the con-
46 cession were freely made, or on allowing the same compensation, if the concession were conditional.

3. The Judgment of the Supreme Court of the State of Iowa sustained the judgment of the District Court of Iowa in and for Mitchell County, which approved the Final Report of the Administrator with the Will annexed, and which directed him to pay to the Treasurer of State a collateral inheritance tax of twenty per cent. of the portions of the Estate going to non-resident aliens, your Petitioners, Beneficiaries under the Will of the Deceased in contravention of Articles One and Seven of the Treaty of Friendship, Commerce and Navigation entered into by the United States and Denmark in 1826 (8 Stat. at L. 340) and renewed in 1857 (11 Stat. at L. 719).

4. The Judgment of the Supreme Court of the State of Iowa, upholding Section 1467 of the Code of Iowa, Supp. 1907, as amended, which reads:

"All property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a descendant, stepchild, or the lineal descendant of a stepchild of a decedent, or to or for charitable, educational or religious societies or institutions, including hospitals, public libraries and public art galleries kept open to the free use of the public not less than three days of each week, within this state, shall be subject to a tax of 5 per centum of its value, above the sum of $1,000, after the payment of all debts, for the use of the state; and all administrators, executors and trustees and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by
47 them, respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. Whenever property, or any interest therein, shall pass to heirs, devisees, or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, non- residents of the United States, the same shall be subject to a tax of 20 per centum of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be 10 per centum of the value of the property or interest so passing,"

is in contravention of the Treaty rights of your Petitioners under Articles One and Seven of the Treaty of Friendship, Commerce and Navigation entered into by the United States and Denmark in 1826

(8 Stat. at L. 340) and renewed in 1857 (11 Stat. at L. 719).

5. The Judgment of the Supreme Court of the State of Iowa, upholding the Statute imposing a higher succession tax in case of property going to non-resident aliens, than in case of that going to citizens, violates the Treaty rights of your Petitioners under Article Seven of the Treaty of Friendship, Commerce and Navigation entered into by the United States and Denmark in 1826 (8 Stat. at L. 340) and renewed in 1857 (11 Stat. at L. 719), which is as follows:

"The United States and his Danish Majesty mutually agree, that no higher or other duties, charges, or taxes of any kind, shall be levied in the territories or dominions of either party, upon any personal property, money or effects, of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, or effects or otherwise, than are or shall be payable in each state, upon the same, when removed by a citizen or subject of such states respectively."

6. The Judgment of the Supreme Court of the State of Iowa sustained the judgment of the District Court of Iowa in and
48 for Mitchell County, which overruled the objections of these Petitioners, the Beneficiaries under the Will of the Decedent, to the Final Report of the Administrator with the Will annexed, and approved the Final Report of the Administrator with the Will annexed and directed him to pay to the Treasurer of State a Collateral Inheritance Tax of Twenty Percentum of the portions of the Estate going to non-resident aliens, your Petitioners, Beneficiaries under the Will of the Deceased in violation of Paragraph Two, Section One, Article VI. of the Constitution of the United States.

7. The Supreme Court of Iowa erred in holding that a Statute imposing a higher succession tax in case of property going to nonresident aliens than in case of that going to citizens does not violate a treaty declaring that no higher tax of any kind shall be levied upon the property or effects of the respective subjects of the contracting parties on the removal of the same from the domains of the parties reciprocally, either upon the inheritance of such property or otherwise, than is or shall be payable in each state upon the same when removed by a citizen or subject thereof.

8. The Supreme Court of Iowa erred in holding that the District Court of Iowa in and for Mitchell County, rightly adjudged the Statutes relating to the exaction of an Inheritance Tax not in conflict with the provisions of the Treaty with Denmark.

HUGH O'NEILL,
Attorney for Petitioners.

49 [Endorsed:] No. —. In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al., Plaintiffs in Error vs. The State Treasurer of the State of Iowa, et al. Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa. Assignment of Errors. Filed Nov. 11, 1915, B. W. Garrett, Clerk Supreme Court. Hugh O'Neill, Att'y for Plaintiffs in Error.

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Judges of the Supreme Court of the State of Iowa, Greeting:

Because in the record and procedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the June Term, A. D. 1914, between Whelmina Elizabeth Peterson, et al., Legatees of Anna Margrethe Anderson, Deceased, Appellants, and the State of Iowa ex rel the State Treasurer, Claimant and Appellee, et al. a manifest error hath happened, to the great damage of the said Appellants, as by their Complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the date of the Citation in said cause, in the said Supreme Court, to be then and there held: that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

51 Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 15th day of November, in the year of our Lord One Thousand Nine Hundred and Fifteen.

Issued at office in the City of Des Moines, with the Seal of the District Court of the United States for the Southern District of Iowa, dated as aforesaid.

W. C. McARTHUR,
Clerk United States District Court,
Southern District of Iowa.

[Seal U. S. District Court, District of Iowa.]

Allowed by

HORACE E. DEEMER,
Chief Justice, Supreme Court of Iowa.

52 [Endorsed:] No. —. In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al. Plaintiffs in Error vs. The State Treasurer of the State of Iowa, et al. Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa. Writ of Error. Filed Nov. 11, 1915. B. W. Garrett, Clerk Supreme Court.

53 UNITED STATES OF AMERICA, *ss:*

The United States of America to the State Treasurer of the State of Iowa, and C. L. Hanson, Administrator, with the Will Annexed, of the Estate of Anna Margrethe Anderson, Deceased, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., not exceeding thirty days from and after the day this Citation bears date, pursuant to a Writ of Error, filed in the Clerk's office of the Supreme Court of Iowa, wherein Whelmina Elizabeth Petersen, et al., Legatees of the Estate of Anna Margrethe Anderson, Deceased, are Plaintiffs in Error, and you are Defendants in Error, to show cause, if any there be, why the Judgment rendered against the said Plaintiffs in Error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of Iowa, this 15th day of November, in the year of our Lord One Thousand Nine Hundred and Fifteen.

HORACE E. DEEMER,
Chief Justice.

The undersigned attorneys for the State Treasurer of the State of Iowa, one of the defendants in error above named, hereby admits service of the within citation this 17th day of November, 1915, and waive any other further or different service thereof.

GEORGE CASSON.
C. A. ROBBINS.

54 The undersigned attorney for C. L. Hanson, Administrator with Will annexed of the Estate of Anne Margrethe Andersen, one of the defendants in error above named, hereby admits service of the within citation this 20th day of November, A. D. 1915, and waives any other, further or different service thereof.

A. A. KUGLER.

55 [Endorsed:] No.— In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al. Plaintiffs in Error vs. The State Treasurer of the State of Iowa, et al., Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa. Citation. Filed Nov. 11, 1915. B. W. Garrett, Clerk Supreme Court. Hugh O'Neill, Attorney for Plaintiffs in Error.

56 Know all men by these presents, That We, Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christoffersen and Anna Sofie Petersen, by Bent Falkenstjerne, their Attorney in Fact Legatees of Anna Mar-

grethe Anderson, Deceased, as Principals, and United States Fidelity and Guaranty Company, as Surety, are held and firmly bound unto the State Treasurer of the State of Iowa and C. L. Hanson, Administrator with the Will annexed of the Estate of Anna Margrethe Anderson, Deceased, in the Penal Sum of Five Hundred Dollars ($500.00) to be paid to the said State Treasurer of the State of Iowa and C. L. Hanson, Administrator with the Will of the Estate of Margrethe Anderson, Deceased, which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and assigns jointly and severally by these presents duly executed and sealed with our Seals this Eighth day of November, in the year of our Lord One Thousand Nine Hundred and Fifteen.

Whereas, lately at the June Term, A. D. 1914, of the Supreme Court of Iowa, a Judgment was rendered against the above bounden Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christofferson and Anna Sofie Petersen, Legatees of Anna Margrethe Anderson, Deceased, in a cer-
57 tain cause then pending in said Court, wherein Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christoffersen and Anna Sofie Petersen, Legatees of Anna Margrethe Anderson, Deceased, were Appellants, and said State Treasurer of the State of Iowa and C. L. Hanson, Administrator with the Will annexed of the Estate of Anna Margrethe Anderson, Deceased, were Appellees, and which said Judgment has become final by the action of said Court taken at the June Term, A. D. 1914, in affirming the Decree of the District Court for Mitchell County, Iowa, which Decree overruled objections to and approved the Final Report of the Administrator in the settlement of the Estate of Anna Margrethe Anderson, Deceased; and the said Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christoffersen and Anna Sofie Petersen, Legatees as aforesaid, having obtained a Writ of Error from the Supreme Court of the United States to reverse said Judgment and a Citation directed to the said Appellees citing and admonishing them to be and appear at the Supreme Court of the United States to be held at the City of Washington in the District of Columbia, not exceeding thirty days from and after the date of the Citation in said cause.

58 Now Therefore, the condition of the above obligation is such that if the said Whelmina Elizabeth Petersen, Oline Nielsine Petersen, Hans Peter Julius Hansen, Ane Kristine Sorensen, Peter Christian Jorgensen, Hans Peter Jorgensen, Hans Larsen, Jens Peter Larsen, Lars Larsen, Niels Larsen, Karen Marie Christoffersen and Anna Sofie Petersen, Legatees of Anna Margrethe Anderson, Deceased, shall prosecute the said Writ of Error with effect, and pay all damages and costs if they fail to make good their plea, then the

above obligation to be void, otherwise to remain in full force and virtue.

WHELMINA ELIZABETH PETERSEN,
OLINE NIELSINE PETERSEN,
HANS PETER JULIUS HANSEN,
ANE KRISTINA SORENSEN,
PETER CHRISTIAN JORGENSEN,
HANS PETER JORGENSEN,
HANS LARSEN,
JENS PETER LARSEN,
LARS LARSEN,
NIELS LARSEN,
KAREN MARIE CHRISTOFFERSEN,
ANNA SOFIE PETERSEN,
Legatees,
By BENT FALKENSTJERNE,
Their Attorney in Fact.

[Seal.] U. S. Fidelity & Guaranty Company, Incorporated 1896.]

UNITED STATES FIDELITY & GUARANTY CO.
By BIRD GOULD, *Attorney-in-fact.*

Approved Nov. 15, 1915.
HORACE E. DEEMER,
Chief Justice of the Supreme Court of Iowa.

59 [Endorsed:] No. — In the Supreme Court of the United States of America. Whelmina Elizabeth Petersen, et al., Plaintiffs in Error vs. The State Treasurer of the State of Iowa, et al., Defendants in Error. Writ of Error from the Supreme Court of the United States to the Supreme Court of Iowa. Appeal Bond. Copy. Filed Nov. 11, 1915. B. W. Garrett, Clerk of Supreme Court. Hugh O'Neill, Atty. for Plaintiffs in Error.

60 In the Supreme Court of Iowa.

In Re WHELMINA ELIZABETH PETERSON et al.
vs.
The STATE TREASURER OF THE STATE OF IOWA.

I, B. W. Garrett, Clerk of the Supreme Court of the State of Iowa, hereby certify that the attached—
Transcript of the record from the District Court;
Opinion of the Supreme Court of Iowa;
Praecipe of Record;
Assignment of Errors;
Writ of Error;
Citation, and
Appeal Bond

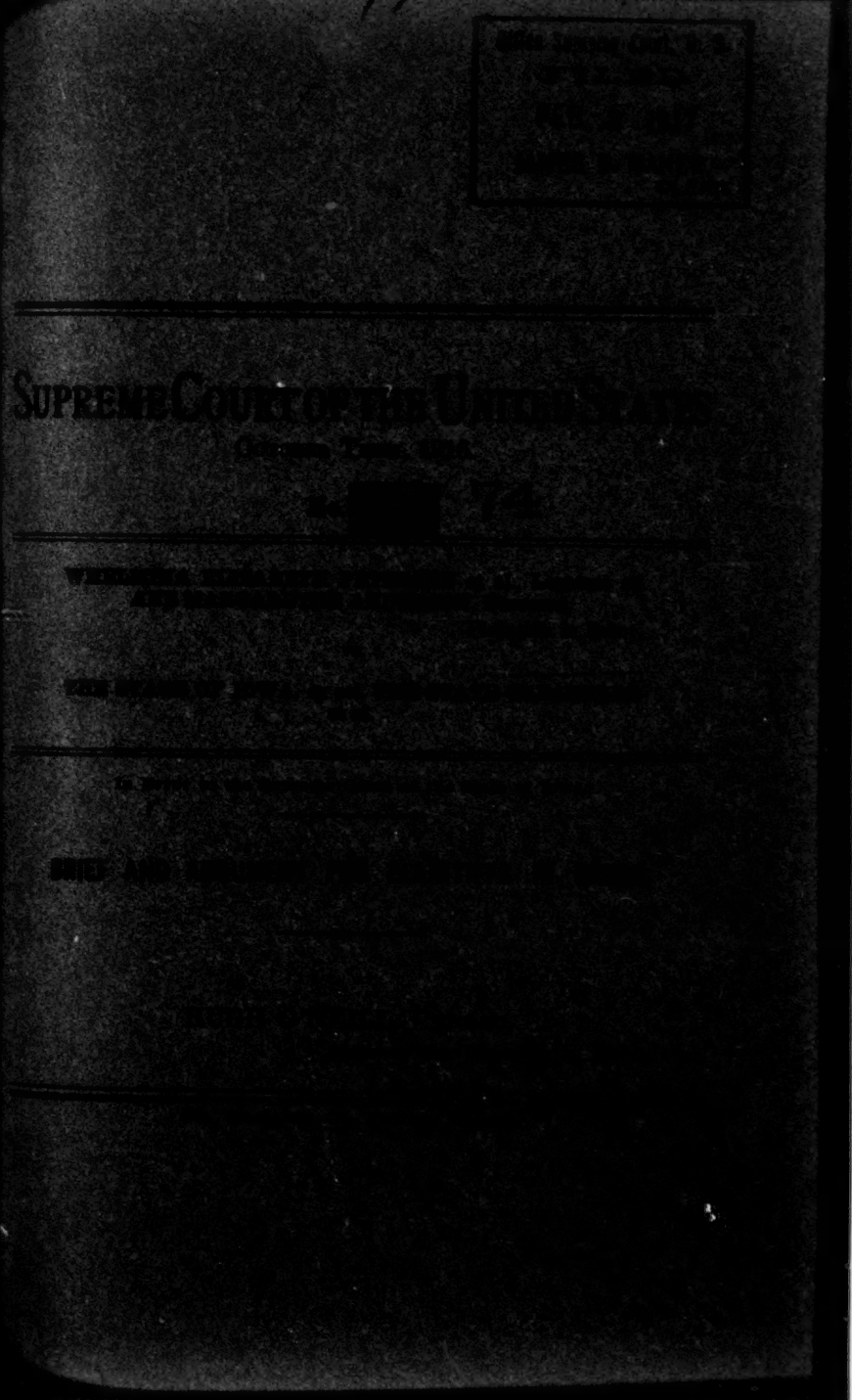
are a full, true and correct and complete abstract of the record in the above entitled cause, as full and complete as the same is and remains of record in my office.

Witness my hand and the seal of this court at Des Moines, Iowa, this 23rd, day of December, A. D., 1915.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.

Endorsed on cover: File No. 25,063. Iowa Supreme Court. Term No. 331. Whelmina Elizabeth Petersen et al., Legatees of Anna Margrethe Anderson, deceased, Plaintiffs in Error vs. The State of Iowa ex rel, The State Treasurer, et al. Filed December 27th, 1915. File No. 25,063.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 331.

WHELMINA ELIZABETH PETERSEN et al., Legatees of ANE MARGARETHE ANDERSON, Deceased,

Plaintiffs in Error,

vs.

THE STATE OF IOWA, ex rel. THE STATE TREASURER et al.

In Error to the Supreme Court of the State of Iowa.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error from the Supreme Court of the United States to the Supreme Court of Iowa which affirmed the judgment of the District Court of Mitchell County, Iowa. This judgment overruled the written objections of Danish non-resident alien beneficiaries, the plaintiffs in error, to the payment of more than a five per cent. (5%) collateral inheritance tax by an administrator with the will annexed, and

approved the administrator's final report, directing him to pay to the Treasurer of the State of Iowa a collateral inheritance tax of twenty per cent. (20%). The decedent Ane Margrethe Anderson died testate in Mitchell County, Iowa, a citizen and resident of that county. The will of the decedent provided for the payment of certain debts and charges and made some bequests not involved in the suit, and ordered the executor to sell the real estate and reduce the entire estate to money and pay the residuary proceeds of both the personal and real estate to the sons and daughters of two deceased sisters and a deceased brother, all the residuary legatees being citizens and residents of the Kingdom of Denmark. The executor under the will died without selling the real estate and an administrator with the will annexed, under an order of court, reduced the entire estate to money and filed his final report showing that payment of 20% collateral inheritance tax with interest was paid to the Treasurer of the State.

The Treasurer of the State of Iowa claimed a collateral inheritance tax of twenty per cent. (20%) on the net proceeds going to the beneficiaries in Denmark, basing his claim on Section 1467 of the Code of Iowa, as amended, which reads as follows:

> "All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state, or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother,

husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a descendant, step-child, or the lineal descendant of a step-child of a decedent, or to or for charitable, educational or religious societies or institutions, including hospitals, public libraries, and public art galleries kept open to the free use of the public not less than three days of each week; within this state, shall be subject to a tax of five per centum of its value, above the sum of one thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees and any such grantee under a conveyance, and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of decedent until paid. Whenever property, or any interest therein shall pass to the heirs, devisees, or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty per centum of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum of the value of the property or interest so passing."

The Danish non-resident alien beneficiaries filed written objections, claiming that the estate was subject to a tax of but five per cent. (5%), on the ground that this statute was in contravention of the terms of the Treaty of Friendship, Commerce and Navigation entered into by the United States and Denmark on April 26, 1826, and renewed in 1857, Articles 1

and 7 having a direct bearing on the issues. Article 1 of the Danish treaty contains the "favored nation clause," providing that the high contracting parties stipulated not to grant particular "favor to other nations * * * which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession were freely made, or on allowing the same compensation if the concession were conditional."

Article 7 of the Danish treaty reads:

> "The United States and His Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, effects or otherwise than are or shall be payable in each state, upon the same, when removed by a citizen or subject of such states respectively."

The United States appeared by petition of intervention, filed by the United States Attorney for the Northern District of Iowa, and joined in the objections of the alien legatees and set up the treaty referred to, and urged the invalidity of the statute allowing a tax of twenty per cent. (20%).

The State of Iowa, *ex rel.* the State Treasurer, demurred to the petition of intervention of the United States. The demurrer was sustained by the *nisi prius* court and the objections of the alien legatees were overruled, and all parties electing to stand on their pleadings, the report of the administrator with the will annexed was approved.

Exceptions were taken to the judgment of the court and a proper appeal was prosecuted to the Supreme Court of Iowa.

The judgment of the District Court was affirmed.

The United States of America abandoned further participation in the case. All questions coming before this court for disposition were properly presented in the County Court and preserved in the record and this court is called upon to correct the errors committed by the Supreme Court of Iowa in adjudging Section 1467 of the Code of Iowa, Supp. 1907 as amended, relating to the exaction of an inheritance tax as not in conflict with the provisions of the Treaty with Denmark, concluded April 26, 1826 (8 Stat. at L., 340), and renewed in 1857 (11 Stat. at L., 719), and in depriving the Danish nonresident beneficiaries of their treaty rights whether these rights arise under Article 7 of the Danish treaty or arise under Article 10 of the Treaty with Germany of December 11, 1871 (17 Stat., 927), Article 8 of the Treaty with Honduras of July 4, 1864 (13 Stat., 554), Article 9 of the Treaty with Argentine Republic of July 27, 1853 (10 Stat., 1009), Article 8 of the Treaty with Nicaragua of June 21, 1867 (15 Stat., 554), and of Articles 1 and 2 in the Treaty with Great Britain of March 2, 1899 (31 Stat., 1939, 1940), which because of the most "favored nation clause" in the Danish treaty are to be read and considered a part of the Danish treaty—treaties being, together with the Constitution of the United States, the supreme law of the land. The assignment of errors raises questions of the violation of the treaty rights of petitioners and

the question now comes before the Supreme Court of the United States:

Does Section 1467 of the Code of Iowa, Supp. 1907, as amended, contravene the treaty rights of petitioners who are Danish non-resident alien beneficiaries whether these rights arise under Article 7 of the Danish treaty or arise under Article 10 of the Treaty with Germany of December 11, 1871 (17 Stat., 927), Article 8 of the Treaty with Honduras of July 4, 1864 (13 Stat., 554), Article 9 of the Treaty with Argentine Republic of July 27, 1853 (10 Stat., 1009), Article 8 of the Treaty with Nicaragua of June 21, 1867 (15 Stat., 554), and of Articles 1 and 2 in the Treaty with Great Britain of March 2, 1899 (31 Stat., 1939, 1940), which because of the "most favored nation clause" in the Danish treaty are to be read and considered a part of the Danish treaty, treaties being (together with the Constitution of the United States) the supreme law of the land?

SPECIFICATIONS OF THE ERRORS RELIED UPON.

Plaintiffs in error contend:

(1) That the Supreme Court of Iowa erred in not holding that Section 1467 of the Code of Iowa, Supp. 1907 as amended, was in contravention of Article 7 of the Treaty of Friendship, Commerce and Navigation, entered into by the United States and Denmark in 1826 (8 Stat. at L., 340) and renewed in 1857 (11 Stat. at L., 719).

(2) That the Supreme Court of Iowa erred in not holding that Section 1467 of the Code of Iowa,

Supp. 1907 as amended, was in contravention of the treaty rights of plaintiffs in error since Article 10 of the Treaty with Germany of December 11, 1871 (17 Stat., 927), Article 8 of the Treaty with Honduras of July 4, 1864 (13 Stat., 554), Article 8 of the Treaty with Nicaragua of June 21, 1867 (15 Stat., 554), Article 9 of the Treaty with Argentine Republic of July 27, 1853 (10 Stat., 1009), and Articles 1 and 2 of the Treaty with Great Britain of March 2, 1899 (31 Stat., 1939, 1940), which because of the "most favored nation clause" in the Danish treaty are to be read and considered a part of the Danish treaty—treaties being (together with the Constitution of the United States and the laws made in pursuance thereof) the supreme law of the land.

BRIEF OF THE ARGUMENT.

I.

Article 7 of the Treaty with Denmark secures to plaintiffs in error the right of succession to the property left them by the will of Ane Margrethe Andersen upon the same terms as are accorded to American citizens; and in so far as Section 1467 of the Code of Iowa, Supp. 1907, as amended, burdens them with a greater tax than it does American citizens, it must be held in abeyance, and yield to the provisions of this treaty.

It is contended that the property left the plaintiffs in error, who are collateral relatives of decedent, is liable to pay an inheritance tax of only 5 per cent., the same as if they were not aliens residing out of the United States at the time of decedent's death by virtue of Article 7, of the Treaty with Denmark.

It is admitted that a collateral inheritance tax is not a tax upon property; but is a charge upon the right or privilege of receiving it. It is upon this theory that such a tax is held not to be in violation of the usual constitutional provisions requiring uniformity of taxation upon property. It follows that the levy of a tax of this nature has the direct effect of impairing the right or privilege of receiving property by testament or inheritance and in removing the same; and in that manner this tax impairs the right of the plaintiffs in error to take and remove, since it withholds from them 15 per cent of the property they would be entitled to were they

citizens of the United States and [illegible]is law did not exist. Therefore they are deprived of a right accorded them by the terms of the treaty, unless it can be said that this tax does not deprive them of their treaty rights, because it is an exercise of the power of taxation by a sovereign state, and that the treaty contemplates the exercise of such power by each of the contracting parties. It is conceded that there is no limit to the taxing power of the sovereign and that the right or privilege of succession to property upon the death of its owner may be given or withheld by the State at its pleasure. But this power cannot be rightfully exercised in such a manner as to destroy the very rights the treaty was plainly designed to secure. It is not contended that the citizens of Denmark are by the terms of this treaty accorded any greater rights in their succession to property than the laws of the States of the Union may accord to the citizens of the United States. The rights or privileges of plaintiffs in error as citizens of Denmark with regard to taxation or succession are exactly the same as the citizens of the United States. The language of the treaty that no higher or other duties, charges or taxes of any kind * * * shall be levied upon any personal property, money or effect (and this includes real estate because the treaty was written in French and the French equivalent includes real estate. *Adams* v. *Akerlund*, 168 Ill., 632; 48 N. E., 454; *Stixrud* v. *State*, 58 Wash., 339; 109 Pac., 343) * * * on the removal of the same * * * either upon the inheritance of such property, money or effects or otherwise, etc., means that the right to receive by

testament or succession are such as are defined by the general laws in force in the country where the property is situated. To give force and effect to the treaty and avoid the destruction of the very end it was plainly intended to accomplish, it must be concluded that the inheritance and testamentary rights secured thereby are such that they cannot be impaired, except as such rights and privileges of citizens may be impaired by the laws of their own country.

The holding of the Supreme Court of Iowa that the Statute 1467 of the Code of Iowa, Supp. 1907 as amended, imposing a higher succession tax in case of property passing to non-resident aliens, than in case of that going to citizens, does not violate a treaty, declaring that no higher or other duties, charges or taxes of any kind shall be levied upon the property or effects of the respective subjects on the removal of the same from the dominions of the parties reciprocally, either upon the inheritance of such property or otherwise, than is or shall be payable in each state upon the same when removed by a citizen or subject thereof is a plain violation of the rights secured by this treaty. The treaty clearly means that as to duties, charges or taxes of any kind levied upon property of their respective citizens on the removal of the same from their territories or dominions reciprocally, the citizens of each country shall stand on the same footing. Otherwise it is evident the purpose and intent of the high contracting parties might be rendered of no effect by the passage and enforcement of laws discriminating against citizens of other countries un-

der the guise of exercising the taxing power to control the succession of property. If plaintiffs in error can be discriminated against by withholding from them in the form of taxation 15 per cent of the property left them, then by the same method of discrimination there can be a complete confiscation or escheat, even though others may not have their privilege of succession impaired in the least.

These are the rights and the law defining them, which must have been in view in the making of the treaty, rather than possible discriminating laws affecting the rights of aliens different from citizens; for, to concede the right to make and enforce such laws is to concede the right to nullify the provisions of the treaty.

> *Re Stixrud* v. *State of Washington*, 58 Washington, 339; 109 Pac., 343; 33 L. R. A., 632.

And if the treaty admits of two constructions, one restrictive of rights and the other favorable to them, the latter is to be preferred.

> *Huendein* v. *Lynihan*, 100 U. S., 483.

A very liberal construction must be given to the statute to make it a succession tax. If the statute, Sec. 1467, were to receive a strict construction it would be held that the tax was upon the property, not upon the passing or transmission. Striking out all dependent clauses, it would read, "*All property* within the jurisdiction of this State * * * which shall pass by will or by the statute of inheritance of this or any other state, or by deed, grant, sale or

gift * * * shall be subject to a tax of 5 per centum of its value," etc.

The last part of the section would read, "*Whenever property,* or any interest therein, shall pass to heirs, devisees or other beneficiaries * * * who are aliens, non-residents of the United States, *the same* (meaning the property) *shall be subject* to a tax of 20 per centum of its true value, etc." So that in order to hold the collateral inheritance tax law of Iowa to be a succession tax it is necessary to give such a construction that it is not a tax upon property, but the right to succeed to or take the title. If such a liberal construction were given to the treaty and it should be, then "duties, charges, or taxes of any kind" would surely include inheritance taxes and "on removal" would surely mean the same as "on the passing." But happily the parties are not left to a strained construction of the treaty, there being in the treaty a "favored nation clause," which when invoked makes the favorable provisions of all other treaties on like subjects as much a part of the Danish treaty as if found within the four corners of the treaty.

II.

If Article 7 of the Treaty with Denmark will not bear the construction contended for according to its terms then under the "most favored nation clause" of Article 1 of the Treaty with Denmark, Danish subjects, collateral heirs of a citizen of Iowa, are not subject to the discriminatory tax imposed by statute upon alien collateral heirs since under Treaties with Germany of 1871 (17 Stat., 927, Art. 10), with Hon-

duras of July 4, 1864 (13 Stat., 703, Art. 8), with Nicaragua of June 21, 1867 (15 Stat., 554, Art. 8), with the Argentine Republic of July 27, 1853 (10 Stat., 1009, Art. 9), and with Great Britain of March 2, 1899 (31 Stat., 1939, 1940), the citizens thereof enjoy the right of inheritance in the United States without greater charge than is exacted from native citizens.

The "most favored nation clause" makes the Danish subject the beneficiary of any inheritance tax immunity that can be asserted by a subject of any other nation. There is in the Danish treaty under consideration a "most favored nation clause," being Article 1, which when invoked and applied to articles concerning property and the devolution thereof in the treaties with Germany, Honduras, Nicaragua, Argentine Republic and Great Britain, render nugatory the provision of the Iowa Code to burden the Danish alien beneficiaries with the discriminatory tax. In construing the Danish treaty, it is to be read, as if it made the Danish subjects beneficiaries of the inheritance tax immunity provided for in Article 10 of the Treaty with Germany, in Article 8 of the Treaty with Honduras, in Article 8 of the Treaty with Nicaragua, in Article 9 of the Treaty with Argentine Republic and of Articles 1 and 2 in the Treaty with Great Britain.

The Supreme Court of Alabama in *Carpigiani* v. *Hall et al.*, 172 Ala., 287, holds that "Article 17 of our Treaty with Italy is to be read as if it conferred in specific terms all of the consular powers and privileges set out in Article 9 of the Argentine treaty. The court says at page 293:

"Under the 'most favored nation' clause in the above treaty, appellant makes reference to Article 9 of the Treaty of 1853 between the Argentine Republic and the United States: 'If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the consul general or consul of the nation to which the deceased belonged, or the representative of said consul general or consul, in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs.' 10 Stat., 1009; U. S. Treaties, 1904, p. 24.

"It thus results that Article 17 of our Treaty with Italy is to be read as if it conferred in specific terms all of the consular powers and privileges set out in Article 9 of the Argentine treaty.

"Article 6 of the Constitution of the United States declares: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the Constitution or laws of any state to the contrary notwithstanding.'

"The final arbiter in all matters of constitutional interpretation is, of course, the Supreme Court of the United States, and that court, by Justice Field, has said of this provision: 'That the treaty power of the United States extends to all proper subjects of negotiation between our government and the governments of other nations is clear. It is also clear that the protection which should be afforded to the citizens of one country owning property in another, and the manner in which that property may be transferred, devised, or inherited, are fitting subjects

for such negotiation, and of regulation by mutual stipulations between the two countries. As commercial intercourse increases between different countries, the residence of citizens of one country within the territory of the other naturally follows, and the removal of their disability from alienage to hold, transfer, and inherit property in such cases tends to promote amicable relations. Such removal has been within the present century the frequent subject of treaty arrangement. The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or its departments, and those arising from the nature of the government itself and of that of the states.' *Geofroy* v. *Riggs*, 133 U. S., 258, 266; 10 Sup. Ct., 295; 33 L. Ed., 642.

"Undoubtedly, the consular prerogative of intervention in and administration of the estates of deceased foreign residents, as granted in Article 9 of the Argentine treaty, is international in its character, and directly within the purview of the treaty power of the federal government, and is therefore binding upon all the courts of this state. We therefore hold that the Italian consul, within the area of his consular territory, is entitled by supreme law to administer upon the estate of any Italian subject who there dies intestate, conformably, as to his general powers, obligations, and mode of procedure, with the statutes of the state.

"These conclusions are fully and directly supported by the decisions of New York and Massachusetts. Estate of Tartaglio, 12 Misc. Rep., 245; 33 N. Y. Supp., 1121; *In re* Fattosini, 33 Misc. Rep., 18; 67 N. Y. Supp., 1119; Wyman, Petitioner, 191 Mass., 276; 77 N. E., 379; 114 Am. St. Rep., 601."

In *Wyman, petitioner*, 191 Mass., 276, the Supreme Court of Massachusetts held that under the existing

treaties which are the supreme law of the land, the petition of the consular representative of the Empire of Russia for the Commonwealth of Massachusetts to be appointed administrator of the estate of a Russian subject who died in Massachusetts, must be granted against the objection of the public administrator and for the reason that under the most favored nation clause found in the Treaty with Russia the provisions of Article 9 of the Treaty of 1853 between the Argentine Republic and the United States should be read as a part of the Russian treaty.

The surrogate of Westchester County, New York, in two cases, *In re* Fattosini's Estate, 67 N. Y. Supp., 1119, and *In re* Lobrasciano's Estate, 77 N. Y. Supp., 1040, has held that the Treaty with Italy of 1878, in the most favored nation clause, carried the benefit of the Argentine treaty to the consuls of Italy, and that the Argentine treaty conferred the right of administration upon the consuls of that country.

See also *In re* Scutella's Estate, 129 N. Y. Supp., 20.

The Supreme Court of Iowa in *Brown* v. *Daly's Estate*, 154 N. W., 602, holds that under Article 5 of the Treaty with Great Britain of March 2, 1899 (31 Stat., 1939, 1940), "in all that concerns the right of disposing of * * * property, real or personal, citizens or subjects of each of the * * * parties shall in the dominions of the other enjoy the rights * * * accorded to the citizens or subjects of the most favored nations" British subjects collateral heirs of a citizen of Iowa, are not subject to the discriminatory succession tax imposed by statute upon alien collateral heirs, since under Treaties with Ger-

many, Honduras, Nicaragua and with the Argentine Republic the citizens thereof enjoy the right of inheritance in the United States without greater charge than is exacted from native citizens.

The pertinent provisions of these treaties are:

The Treaty with Germany of December 11, 1871 (17 Stat., 927, Art. 10):

> "In all successions to inheritances citizens of each of the contracting parties shall pay in the country of the other such duties only as they would be liable to pay, if they were citizens of the country in which the property is situated or the judicial administration of the same may be exercised."

The Treaty with Honduras of July 4, 1864 (3 Stat., 703, Art. 8):

> "In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the mechandise, goods and effects, the succession to personal estates by will or otherwise and the disposal."

The Treaty with Nicaragua of June 21, 1867 (15 Stat., 554, Art. 8):

> "The foregoing provisions shall be applicable to real estate situated within the States of the American Union, or within the Republic of Nicaragua, in which foreigners shall be entitled to hold or inherit real estate. But in case real estate situated within the territories of one of the contracting parties should fall to a citizen of the other party, who, on account of his being an alien, could not be permitted to hold such property in the state in which it may be situated, there shall be accorded to the said heir, or other successor, such time as the laws of the state will permit to sell such property. He shall be at lib-

erty at all times to withdraw and export the proceeds thereof without difficulty, and without paying to the government any other charges than those which would be paid by an inhabitant of the country in which the real estate may be situated."

Article 9 of the Treaty with the Argentine Republic reads:

"Art. 9. In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods and effects, and to the acquiring and disposing of property of every sort and denomination, exchange, testament, or in any other manner whatsoever, as also to the administration of justice; the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties and rights as native citizens and they shall not be charged in any of these respects, with any higher impost or duties than those which are paid or may be paid by native citizens, submitting of course, to the local laws and regulations of each county respectively."

The Articles 1, 2 and 5 of the Treaty with Great Britain are as follows:

"Article 1. Where on the death of any person holding real property (or property not personal), within the territories of one of the contracting parties, such real property would by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged, if circumstances render it necessary, and to withdraw the proceeds thereof, without restraint or interference, and exempt from any succession,

probate or administrative duties, or charges other than which may be imposed in like cases upon the citizens or subjects of the country from which such proceeds may be drawn.

"Art. 2. The citizens or subjects of each of the contracting parties shall have full power to dispose of their personal property within the territories of the other, by testament donation or otherwise; and their heirs, legatees and donees, being citizens or subjects of the other contracting party whether resident or non-resident, shall succeed to their said personal property, and may take possession thereof either by themselves or by others acting for them and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies shall be liable to pay in like cases. * * *

"Art. 5. In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of the high contracting parties shall in the dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation."

It was held in *Brown* v. *Dalys' Estate*, 154 Northwest, 602 (603), that the effect of Article 5, in the British treaty was to give the subjects of Great Britain the benefit of the more favorable provisions if any, of our treaties with other countries; and that whatever ambiguities there may be in Articles 1 and 2 of the Treaty with Great Britain are quite eliminated by the specifications contained in other treaties as above quoted.

After setting forth Article 10 of the Treaty with Germany, Article 8 of the Treaty with Honduras, Article 8 of the Treaty with Nicaragua and Article

9 of the Treaty with Argentine Republic, the Supreme Court of Iowa says:

> "Manifestly, therefore, if the 'most favored nation' clause is applicable to the case, the subjects of Great Britain, as collateral heirs, are entitled to immunity from discrimination under the terms of treaties with other nations as above quoted, even though such immunity had not been provided for in express terms under Article 2 of the Treaty with Great Britain.
>
> "It is contended by appellee, however, that Article 5 has no application to the case. In support of this contention emphasis is put upon the first clause of Article 5: 'In all that concerns the right of disposing of every kind of property.' It is argued that this article does not purport to deal with the right of receiving property. It will be noted that Article 5 does not limit itself to the protection of 'the right of disposing,' but purports to apply to 'all that concerns the right of disposing.' The right of the donor to give and the right of the donee to receive the gift are interdependent. They are parts of the same thing. To abridge the one is to abridge the other. Surely, therefore, the right of a donee to receive is something which 'concerns the right of disposing.'
>
> "We think, therefore, that the appropriate construction of Article 5 makes it applicable to the case before us. If applicable, its effect is to give to subjects of Great Britain the benefit of the more favorable provisions, if any, of our treaties with other countries.
>
> "Whatever ambiguities there may be, therefore, in Articles 1 and 2 of the Treaty with Great Britain, they are quite eliminated by the specifications contained in other treaties as above quoted. Sufficient to say that for the purpose of the case at bar Article 5 of the treaty is decisive."

See, also:

McKeown v. *Brown*, 149 N. W., 593 (Iowa).
In re Moynahan, 151 N. W., 504 (Iowa).

The Supreme Court of Iowa in the case at bar (*Anderson* case, 147 N. W., 1098) held that the collateral inheritance tax of Iowa is a charge or tax or duty upon succession or transmission of property. The Treaty with Great Britain of March 2, 1899, expressly enumerates succession duties as one of the charges upon which no discrimination can be allowed.

Reading into the Danish treaty because of its favored nation clause Articles 1 and 2 of the British treaty of March 2, 1899, Article 10 of the Treaty with Germany of December 11, 1871, Article 8 of the Treaty with Honduras of July 4, 1864, Article 8 of the Treaty with Nicaragua of June 21, 1867, and Article 9 of the Treaty with the Argentine Republic of July 27, 1853, this court should hold that the Treaty with Denmark because of the favored nation clause secures to plaintiffs in error the right of succession to the property left them by the will of Ane Margrethe Anderson upon the same terms that are accorded to American citizens, and that in so far as Sec. 1467 of the Code of Iowa, Supp. 1907, burdens non-resident alien heirs it must be held in abeyance and yield to the provisions of the treaties forbidding discrimination as to inheritance tax.

The Supreme Court of Iowa was of the opinion that the "favored nation clause" in the Treaty with Denmark being limited to Commerce and Navigation cannot be permitted to expand the terms of

the seventh article, evidently believing that a treaty was like a statute, to be confined to those matters which are enumerated in the caption. The very treaty under consideration has a property clause—Article 7. Treaties are not confined to their captions, as will more fully appear by the following:

Treaty of Friendship, Commerce and Navigation, of 1853, with Argentine, treats of settling estates in Article IX.

Treaty of Commerce and Navigation of 1829, with Austria Hungary, treats of property of deceased persons in Article XI.

Treaty of Peace, Friendship, Commerce and Navigation of 1858, with Bolivia, treats of property of decedents in Article XII.

Treaty of Amity, Commerce and Navigation of 1828, with Brazil, in Article XI treats of disposal of property, testamentay and *ab intestato.*

Convention of Peace, Amity, Commerce and Navigation with Central America of 1825 treats of disposal of property, in Article XI, testamentary and *ab intestato.*

Convention of Peace, Amity, Commerce and Navigation with Chile of 1832 in Article IX treats of disposal of property testamentary and *ab intestato.*

Treaty of Amity, Commerce and Navigation with Colombia, of 1824, treats of disposition of property in Article IX, testamentary and *ab intestato.*

Treaty of Peace, Amity, Navigation and Commerce with New Granada (Colombia), 1846, treats in Article XII of the disposal of property whether by testament or *ab intestato.*

Convention of Amity, Commerce and Navigation and for the Surrender of Fugitive Criminals, with the Dominican Republic, of 1867, in Article V treats of property rights and their disposition by testament or *ab intestato.*

Treaty of Peace, Friendship, Navigation and Commerce with Ecuador, of 1839, in Article XII treats rights of property and succession therein.

Treaty of Amity and Commerce, of 1778, with France, in Article XI treats of Droit d' aubaini; and disposition of estates.

Convention of Peace, Commerce and Navigation with the French Republic, of 1800, in Article VII treats of property rights and succession therein.

Consular Convention of 1871 with the German Empire, in Article X treats of property of decedents and succession duties thereon.

Treaty of Peace, Friendship, Commerce and Navigation, of 1849, with Guatemala, in Article XI treats of disposition of property and succession thereto.

Treaty of Commerce and Navigation, of 1840, with Hanover in Article VII treats of reciprocal privileges of citizens, property rights and succession therein.

Convention of Friendship, Commerce and Navigation, of 1827, with the Hanseotic Republics, in Article VII treats of property rights and succession therein.

Treaty of Friendship, Commerce and Navigation and Extradition, of 1849, with Hawaiian Islands, treats in Article VIII of the reciprocal privileges of citizens in personal and real property and succession therein.

Treaty of Amity, Commerce and Navigation, and Extradition, of 1864, with Hayti, treats in Article IX of disposal of personal property and succession therein whether by testament or *ab intestato*.

Treaty of Friendship, Commerce and Navigation, of 1864, with Honduras, in Article VIII treats of the disposal of property and succession therein.

Treaty of Commerce and Navigation, of 1871, with Italy, in Article XXII treats of the disposal of property and succession therein.

Treaty of Amity, Commerce and Navigation, of 1831, with Mexico, in Article XIII treats of succession to personal estate.

Treaty of Peace and Friendship, of 1787 and of 1836, with Morocco, in Article XXII treats of estates of deceased citizens.

Treaty of Peace and Commerce, of 1782, with the Netherlands, treats in Article VI of the disposition of property and succession therein.

Treaty of Friendship, Commerce and Navigation, of 1867, with Nicaragua, in Article VIII treats of the reciprocal privileges of citizens, and right of succession in property.

Convention of Friendship and Commerce and Extradition, of 1871, with Orange Free State, in Article III treats of personal and property rights.

Treaty of Friendship and Commerce, of 1856, with Persia, treats in Article VI of effects of deceased persons.

Convention of Peace, Friendship, Commerce and Navigation, of 1836, with the Peru-Bolivian Confederation, in Article VIII treats of the disposition of personal effects.

Treaty of Friendship, Commerce and Navigation, of 1851, with Peru, in Article XV treats of disposition of property and succession therein.

Treaty of Friendship, Commerce and Navigation, of 1870, with Peru, in Article XII treats of disposal of property and succession therein.

Treaty of Friendship, Commerce and Navigation, of 1877, with Peru, in Article XI treats of property rights and succession therein.

Treaty of Commerce and Navigation, of 1840, with Portugal, in Article XII treats of the disposal of property and succession therein.

Treaty of Amity and Commerce, of 1785 and 1799, with Prussia, treats in Article X of the disposition of property and succession therein.

Treaty of Commerce and Navigation, of 1828, with Prussia, in Article XIV treats of the estate of deceased persons, and the right of succession.

Treaty of Commerce and Navigation, of 1832, with Russia, in Article X treats of estate of deceased persons, and the right of succession.

Convention of Amity, Navigation and Commerce, of 1850 and 1870, with Salvador, in Article XII treats of the disposition of property, and the right of succession therein.

Treaty of Commerce and Navigation, of 1838, with Sardinia, in Article XVIII treats of disposal of property and the right of succession.

Convention of Commerce and Navigation, of 1881, with Servia, in Article II treats of rights of real and personal property, and right of disposition and succession therein.

Treaty of Friendship, Boundaries, Commerce and Navigation, of 1795, with Spain, in Article XI treats of the disposition of property and the right of succession therein.

Treaty of Amity and Commerce, of 1783, with Sweden, Article VI treats of effects of deceased persons, and the right of succession.

Convention of Friendship, Commerce and Extradition, of 1850, with Switzerland, in Article V treats of real and personal property rights, and the inheritance thereof.

Treaty of Amity, Commerce and Navigation, of 1797, with Tunis, in Article XIX treats of the effects of deceased persons.

Convention of Amity, Commerce, Navigation, of 1855, with the Kingdom of the Two Sicilies, in Article VII treats of property rights and the right of succession therein.

Treaty of Peace, Amity, Commerce and Navigation, of 1836, with Venezuela, in Article XII treats of property rights and the right of succession therein.

Treaty of Amity, Commerce, Navigation and Extradition, of 1860, with Venezuela, in Article V treats of the disposition of property and right of succession therein.

This list might be extended.

As the Danish treaty because of its "most favored nation clause" is to be read as if in specific terms it exempt all Danish heirs, devisees or other beneficiaries who are aliens, non-residents of the United States, from any succession, probate or administration duties or charges, or any higher imposts or

duties, than those which may be imposed in like cases on American citizens, and as treaties (together with the Constitution of the United States and laws of the United States made in pursuance thereof) are the supreme law of the land, Section 1467 of the Code of Iowa, Supp. 1907, as amended, in so far as it burdens the plaintiffs in error, Danish non-resident aliens, with a greater tax than it does American citizens, must be held in abeyance and yield to the provisions of the treaties forbidding discrimination as to inheritance tax. For the reasons hereinbefore set forth, the judgment of the Supreme Court of Iowa should be reversed.

Most respectfully submitted.

HUGH O'NEILL,
Attorney for Plaintiffs in Error.

Office Supreme Court, U. S.
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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

NO. 281. 74

WHELMINA ELIZABETH PETERSEN et al.,
Legatees of Anna Margarethe Anderson,
Deceased,
Plaintiffs in Error,

v.

THE STATE OF IOWA, ex rel The State
Treasurer, et al.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

H. M. HAVNER,
ATTORNEY GENERAL OF IOWA,
C. A. ROBBINS,
ASSISTANT ATTORNEY GENERAL,
Attorneys for Defendant in Error.

PROOF OF SERVICE.

I hereby accept and acknowledge due and legal service of the within Brief and Argument, and acknowledge the receipt of a true copy thereof, on this.....day of April, 1917.

.....
Attorney for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

NO. 331.

WHELMINA ELIZABETH PETERSEN et al.,
Legatees of Anna Margarethe Anderson,
Deceased,

Plaintiffs in Error,

v.

THE STATE OF IOWA, ex rel The State
Treasurer, et al.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The defendant in error is content with the statement of the case as made by the plaintiff in error as set forth in his brief and argument at pages one to six thereof.

ERRORS RELIED UPON.

The plaintiff in error relies upon two propositions for reversal.

I.

That the statute of the state of Iowa imposing the tax of 20% upon property passing to subjects and residents of Denmark is in violation of Article 7 of the treaty of 1826 between the United States and Denmark and is therefore void.

II.

That such statute is in violation of Article 1 of the same treaty, which article contains the so-called favored nation clause, and, when taken in connection with and aided by the treaties between the United States and Germany and between the United States and the other nations named at page six of the brief of plaintiffs in error.

The defendant in error will attempt to discuss these two propositions in their order as above stated.

BRIEF.

I.

The constitution and laws of the United States made in pursuance thereof and treaties made under the authority of the United States are the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding.

Constitution of the United States, Art. VI, Sec. 2;

Whitney v. Robertson, 124 U. S., 190, at 194.

II.

The United States and his Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either party, upon any personal property, money, or effects of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, or effects, or otherwise than are or shall be payable in each State, upon the same, when removed by a citizen or subject of such State, respectively.

Article VII, Danish Treaty.
Treaties in Force 1904, page 231.

III.

By every sound rule of construction, an instrument should be interpreted by the context, so as if possible to give a sensible meaning and effect to all its provisions; and so as to avoid rendering portions of it contradictory and inoperative by giving effect to some clauses to the exclusion of others.

Ladd v. Ladd, et al., 49 U. S. (8 How.) 10, at 27, 28.
U. S. v. Wong Kim, Ark., 169 U. S., 649, 653.

IV.

Treaties shall be liberally construed so as to carry out the apparent intention of the parties to secure equality and reciprocity between them. As they are contracts

between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial or special sense imposed upon them by local law, unless such restricted sense is clearly intended. And it has been held by this court that where a treaty admits of construction, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred.

Geofroy v. Riggs, 133 U. S., 258, at 271.
In re Anderson's Estate, 146 N. W., 1098.

V.

The foregoing rules for the liberal construction of treaties have been applied and followed by the United States Supreme Court in the following cases:

Frederickson v. La., 64 U. S., 445, 448;
Sanchez v. U. S., 216 U. S., 167, 175;
Whitney v. Robertson, 124 U. S., 190;
Bartram v. Robertson, 122 U. S., 116;
Wildenhus' Case, 120 U. S., 1;
Campagnie Francaise, etc., v. Bd. of Health, 186 U. S., 380, 393; 183 U. S., 424.

VI.

A tax imposed upon the right conferred by the state to inherit is not unconstitutional whether imposed upon citizens and aliens alike or upon aliens alone.

Mager v. Grima, 49 U. S. (8 How.) 490, 493;
Succession of Sala, 24 So. Rep. 674;
In re Anderson's Estate, 147 N. W., 1098;
Frederickson v. La., 64 U. S., 445, 448.

VII.

Duties of "droit detraction" or tax on emigration and "taxes upon removal" *are not* taxes upon *inheritance or succession.*

In re Strobel's Estate, 39 N. Y. Supp., 169;
Succession of Sala, 24 So. Rep., 674;
Wheaton's International Law, by J. B. Atlay, Sec. 82, p. 134, Fourth Edition.
Articles I and III of the Treaty with Bavaria, concluded January 21, 1845.
Treaties in Force 1904, page 57.
Articles I and III of the Treaty with Hesse, concluded May 14, 1845.
Treaties in Force 1904, page 688.
Articles I and III of the Treaty with Wurtemberg, concluded April 10, 1844.
Treaties in Force 1904, page 806.
Article X of the Treaty with Mecklenburg-Schwerin, concluded December 9, 1847.
Treaties in Force 1904, pages 510, 511.

VIII.

The inheritance tax is not levied on property, neither is it upon persons, it is upon the *right to dispose* of

property and it is not until the property has yielded its contribution to the state that it becomes the *property of the legatee.*

U. S. v. Perkins, 163 U. S., 625, 628, 629;

Herriott v. Potter, 115 Ia., 648.

IX.

The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest, is the transmission or receipt of property occasioned by death.

Knowlton v. Moore, 178 U. S., 41 at page 59.

X.

An inheritance tax has nothing to do with commerce or with imports or with exports.

Treaties in Force 1904, page 754.

Mager v. Grima, et al., 49 U. S. (8 How.) 490 at 493;

Hall v. Virginia, 75 U. S., 168 at 183, 184;

Nathan v. La., 49 U. S., 73 at 79, 80;

In re Anderson's estate, 147 N. W., 1098.

XI.

The contracting parties, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly with all, engage, mutually, not to grant any particular favor to other nations, *in respect of commerce and navigation,* which shall not immediately become common to the other party,

who shall enjoy the same freely, if the concession were freely made, or on allowing the same compensation, if the concession were conditional.

Article 1, Danish Treaty.

Treaties in Force 1904, page 229.

ARGUMENT.

I.

From the foregoing authorities, defendant in error will attempt to establish that Article 7 of the Danish Treaty is in applicable to the case at bar for the following reasons:

(a) This article of the treaty does not relate to the transfer of property by inheritance but only to the right of removal of property whether acquired by inheritance or otherwise.

(b) This provision of the treaty is not applicable to property situated within the United States and owned by citizens and residents of the United States even though passing by inheritance to subjects of Denmark upon the death of the owner but only applies to property situated within the United States owned by citizens and residents of Denmark passing to subjects and residents of Denmark and vice versa.

(c) The tax imposed by the statute involved in the case at bar is not one upon the removal of the property but upon the transmission by inheritance of the same from the deceased to the non-resident alien.

(d) The tax imposed by this statute attaches instanter upon the death of the ancestor and before the right of removal by the non-resident heir can be exercised.

(a) *Article 7 of the Treaty relates to removal taxes and not to succession taxes.*

The Article referred to reads as follows:

> "The United States and his Danish Majesty mutually agree that no higher or other duties, charges or taxes of any kind shall be levied in the territories or dominions of either parties, upon any personal property, money, or effects of their respective citizens or subjects, *on the removal of the same* from their territories or dominions reciprocally, either upon the inheritance of *such property,* money or effects, or otherwise than are or shall be payable in each state upon the same, when removed by a citizen or subject of each state, respectively."

It is clear that the only tax in the contemplation of the parties was a tax upon the removal of the property independent of and aside from any succession tax, and the words "either upon the inheritance of such property * * * or otherwise" were made use of to describe the manner in which the property contemplated might be acquired and not for the purpose of stipulating against the imposition of a succession tax.

(b) What is the subject under consideration in this article of the Treaty, It is—

"Any personal property, money or effects of their respective citizens or subjects."

Each country is desirous of protecting *its citizens* or subjects in *their rights* in personal property *owned by them* in the territory of *the other party.*

In the language of Justice Campbell in *Frederickson v. La.*, 64 U. S., 445: "The cause of the treaty was, that the citizens and subjects of each of the contracting powers were, or might be, subject to onerous taxes upon property possessed by them within the states of the other, by reason of their alienage."

By the term of Art. 7 of the treaty "*such property*" the property owned by a citizen of Denmark may be removed from the United States upon payment of such tax as a citizen of the United States would pay if removing such property. It is the personal property owned by a *citizen of Denmark* within the United States that is within the scope of the treaty relating to its removal from the United States.

It is likewise such personal property owned by a *citizen of Denmark* within the United States that is within the scope of the treaty relating to *its inheritance.*

The treaty has no application to the personal property of *citizens of the United States* residing *in Iowa* and owning property *here* that he may wish to remove to any foreign country. Denmark is not concerned as to the duty a citizen of this country may be required to pay upon property exported. There is nothing in the treaty that can be construed to apply to the property owned by a citizen of this country upon the removal of the same from the United States. There is then nothing in the

treaty applicable to *the inheritance* of such property. That portion of the treaty relating to inheritances applies only to *such property* as is embraced within its scope relating to the *removal of property.*

Anna Margrethe Anderson was a *citizen of Iowa* residing at home and owning property here that at her death passed to her heirs in Denmark. She was a *citizen of the United States* and had she, during her life, desired to remove her personal property to Denmark, this treaty would have no application whatever. She had all the rights of a citizen of the United States without having them safeguarded by any treaty between the United States and Denmark. The treaty guarantees to persons removing property from the United States the same rights and privileges that a citizen of the United States would enjoy and for that reason it cannot be made to apply to removal of property by a citizen of the United States.

As it does not apply to the *removal of property* of a citizen of the United States when that property is situated within the United States it does not apply to the *inheritance of the personal property* of a citizen of the United States when that property is inherited by subjects of Denmark, for unless the property is embraced within the clause *relating to its removal,* it is not within that clause *relating to its inheritance.* It is *such* property only as is embraced *within the one* that is *included in the other.*

This treaty is in the nature of an exemption from taxation, and like all exemptions, is to be strictly construed. If this estate falls within the scope of the laws of this

state imposing a tax of 10 and 20 per cent upon inheritance by aliens, the exemption must be strictly construed against the claim if there be any doubt as to its application to this estate.

This Court in *Frederickson vs. Louisiana*, 64 U. S., 445, 448 had under consideration and construction a treaty with Wurtemberg that is substantially the same as the Swedish treaty as it relates to personal property. In the Frederickson case the court said:

> "We concur with the supreme court of Louisiana in the opinion that the treaty does not regulate the testamentary disposition of citizens or subjects of the contracting powers, in reference to property within the country of their origin or citizenship. The cause of the treaty was, that the citizens and subjects of each of the contracting powers were or might be subject to onerous taxes upon property possessed by them within the states of the other, by reason of their alienage, and its purpose was to enable such persons to dispose of their property by paying such duties only as the inhabitants of the country where the property lies under like conditions.
>
> The case of a citizen or subject of the respective countries residing at home and disposing of property there in favor of a citizen or subject of the other was not in the contemplation of the contracting powers, and is not embraced in this article of the treaty.
>
> This view of the treaty disposes of this cause upon the grounds on which it was determined in the Supreme Court of Louisiana."

In the Succession of Rixner, 32 L. R. A. 189, 190, the court there construed a similar treaty to the same effect but held that the treaty *applied in that case* for the reason that the deceased owner of the property *was a resident of Sicily where she was domiciled.* That her property was in Louisiana and that her heirs were also domiciled in Sicily.

The court distinguished between the Rixner and Frederickson cases as follows:

> **"The record shows that Aurelia Rixner died at Marcelle, Sicily, where she was domiciled, and at that place she executed her last will, that her property is situated in Louisiana where her succession is being administered, and her universal legatee resides at the place of her domicile. It is therefore evident that this case does not come within the purview of that decision."**

II.

FAVORED NATION CLAUSE.

Article I of the Danish treaty relied upon by plaintiff in error while containing a favored nation clause yet this favored nation clause is, by its own terms, restricted to *"commerce and navigation"* and a collateral inheritance tax has no relation or connection with commerce or navigation; hence, the more favorable provisions made by treaties between the United States and Germany and the other case mentioned with reference to the disposition and removal of property cannot be said to be available to the plaintiffs in error for the reason that said favored nation clause relied upon has no relation thereto.

Plaintiff calls attention to the construction of our supreme court placed upon the favored nation clause of the British Treaty in the cases of *Brown vs. Daly's Est.*, 154 N. W., 602 and *McKeown vs. Brown*, 149 N. W., 593 and *In re Moynahan*, 157 N. W., 504, and on page 21 of his brief he admits that:

> *"The treaty with Great Britain of March 2, 1899, expressly enumerates succession duties as one of the charges upon which no discrimination can be allowed."*

This fact which has been so candidly admitted, is the basis for the distinction made by the court below between cases arising under the *British* and *Danish* treaties.

If the favored nation clause in the Danish treaty stipulated against discrimination in *succession taxes* and was not confined to *"commerce* and *navigation"*, then the decision of the lower court would have been the same in the case at bar as in the Daly case and the other cases arising under the British treaty.

The fallacy of the argument made by the plaintiff in error consists in his attempt to tie together and bring to his aid the favored nation clauses of the Danish and of the British treaty as is attempted at page 21 of his brief.

To be of any avail to plaintiff in error the favored nation clause must be in the *Danish treaty*, and it is not permissible to chain together the favored nation clauses found in treaties with two or more countries.

That a succession tax has no relation to commerce see *Mager vs. Grima, et al.*, 49 U. S., at 493, where it is said:

"And if a state may impose it upon its own citizens it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens.

"We can see no objection to such a tax, whether imposed on citizens and aliens alike, or upon the latter exclusively. *It certainly has no concern with commerce, or with imports or exports.* It has been suggested, indeed, in the argument, that, as the legatee resided abroad, it would be necessary to transmit to her the proceeds of the portion of the estate to which she was entitled, and that the law was therefore a tax on exports."

At page 21 of his brief plaintiff in error states:

"The supreme court of Iowa was of the opinion that the 'favored nation clause' in the Treaty with Denmark being limited to commerce and navigation cannot be permitted to expand the terms of the seventh article, evidently believing that a treaty was like a statute, to be confined to those matters which are *enumerated in the caption.*",

and then proceeds to set out the captions of various treaties of commerce and navigation, some of which contain articles relating to subjects other than commerce and navigation. Conceding that a treaty might cover subjects not embraced in its caption and that in this respect it differs from a statute, yet as we have heretofore seen Article 1 of the treaty in question is by its own terms, and not by its caption merely, restricted to *"commerce and navigation."*

To recapitulate, we respectfully submit that the first assignment made by plaintiff in error cannot be sustained because:

(a) Article 7 of the treaty relates to removal rather than succession taxes.

(b) It relates to property passing from non-residents of the United States rather than property of residents of the United States and the second assignment of error cannot be sustained because Article 1 of the treaty containing the favored nation clause relates to commerce and navigation only and, hence, the statute attacked violates neither provision of the treaty and, hence, the judgment of the court below was correct and should be affirmed.

Respectfully submitted,

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C. A. ROBBINS, *Assistant Attorney General,*

Attorneys for Defendant in Error.

PETERSEN ET AL., LEGATEES OF ANDERSON, *v.* STATE OF IOWA EX REL. THE STATE TREASURER, ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 74. Argued November 21, 1917.—Decided December 10, 1917.

Article 7 of the treaty with Denmark of April 26, 1826, 8 Stat. 340, (renewed April 11, 1857, 11 Stat. 719,) places no limitation upon the right of either government to deal with its own citizens and their property, within its dominion.

Therefore, where a native of Denmark, who became a naturalized citizen of the United States, died a resident and property owner in the State of Iowa, and in the settlement there of his estate inheritance taxes were imposed in respect of legacies to subjects and residents of Denmark, the treaty affords the legatees no basis for complaining of the discrimination of the Iowa law (1907 Supp. Code,

§ 1467), which taxes legacies to nonresident aliens higher than those given under similar conditions to residents of the State without regard to the residence or nationality of the testator.

The favored nation clause in Article 1 of the above cited treaty with Denmark is applicable only "in respect of commerce and navigation;" it does not apply where the discrimination complained of is in the rates of state inheritance taxes.

166 Iowa, 617, affirmed.

THE case is stated in the opinion.

Mr. Hugh O'Neill for plaintiffs in error.

Mr. Freeman C. Davidson, with whom *Mr. H. M. Havner*, Attorney General of the State of Iowa, and *Mr. C. A. Robbins*, Assistant Attorney General of the State of Iowa, were on the brief, for defendants in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Anna M. Anderson, a native of Denmark, but a naturalized citizen of the United States, died in the State of Iowa where she resided and owned property. By her will she gave money legacies to her nephews and nieces who were subjects of the Kingdom of Denmark and resided therein. By the death duties imposed by the law of the State of Iowa a higher rate was imposed on legacies made to nonresident aliens than was payable on those given under similar conditions to residents of Iowa whether made by a citizen or by resident or nonresident aliens. (§ 1467, 1907 Supplement to the Code of Iowa.) The representative of the estate of Anderson in filing his accounts having credited himself with the sum due to the State on the legacies, which he had paid, the foreign legatees opposed the allowance of such

credit on the ground that the charge of a greater sum to them because they were aliens and nonresidents than would have been charged against them had they been residents, was illegal because in conflict with a treaty between the United States and Denmark. The case is here to review the action of the court below rejecting such contention and upholding the validity of the charge. 166 Iowa, 617.

The court, conceding that if the treaty were applicable it would be controlling, based its conclusion solely on the ground that the treaty when rightly considered did not apply, and in the argument at bar the error of this conclusion is the sole ground relied upon.

The treaty is that of April 26, 1826 (8 Stat. 340), renewed in 1857 (11 Stat. 719), and the particular clauses invoked are Article 1, the favored nation clause, and Article 7, dealing more directly with the subject under consideration. We postpone momentarily the first to come at once to the latter. The article is as follows:

"The United States and his Danish Majesty mutually agree, that no higher or other duties, charges, or taxes of any kind, shall be levied in the territories or dominions of either party, upon any personal property, money, or effects, of their respective citizens or subjects, on the removal of the same from their territories or dominions reciprocally, either upon the inheritance of such property, money, or effects, or otherwise, than are or shall be payable in each State, upon the same, when removed by a citizen or subject of such State respectively."

It is obvious that the article places restrictions upon the authority of the respective countries to impose taxes, duties or charges under the circumstances and conditions for which it provides. Conceding that it requires construction to determine whether the prohibitions embrace taxes generically considered, or death duties, or excises on the right to transfer and remove property, singly or

collectively, we are of the opinion that the duty of interpretation does not arise since in no event would any of the prohibitions be applicable to the case before us. We are constrained to this conclusion because the case here presented concerns only the power of the State of Iowa to deal with a citizen of that State and her property there situated, while the prohibitions of the treaty, giving to them their widest significance, apply only to a citizen of Denmark and his right to dispose of his property situated in the State of Iowa. This is undoubted because there is no controversy as to the first, the citizenship in Iowa, and there is not room for substantial doubt as to the latter, since on the face of the treaty the contractual limitations which it provides are manifestly intended not to control or limit the right of either of the governments to deal with its own citizens and their property within its borders, but were solely intended to restrict the power of both of the governments to deal with citizens of the other and their property within its dominions. But, if the mere letter of portions of the article when separately considered would leave room for any doubt on the subject, it would be dispelled by the context and by the consideration that the foundation of the provision is the recognition of the plenary power of each country to legislate according to its conceptions of public welfare as to its own citizens and their property within its jurisdiction. Indeed that which is contracted against is merely a departure by discrimination by either one of the countries against the citizens of the other and their property therein from the legislation governing their own citizens. In other words, the right of the citizens of each of the contracting countries reciprocally to own, dispose of or transmit their property situated in the other country, free from provisions or restrictions discriminating because of alienage, is in the largest possible sense that which is protected by the treaty. And conversely this being true, it follows also that the

treaty did not protect the right of the citizens of either country to acquire by transfer or inheritance property situated in the other belonging to its own citizens free from the restraints imposed by the law of such country on its own citizens even although such restraints would not have been applicable in case the property had been disposed of or transmitted to a citizen.

The ruling in *Frederickson* v. *Louisiana*, 23 How. 445, while it concerned a treaty with a different country, is here aptly illustrative and persuasively controlling. In that case the contention was that limitations contained in a treaty between the United States and the King of Wurttemburg forbidding discrimination as to the disposal or transmission of their property by subjects of the King of Wurttemburg were applicable to property in the State of Louisiana of a citizen of that State because of the accidental circumstance that the property had passed by the death of such citizen to subjects of the King of Wurttemburg, nonresidents in the United States. In holding the contention to be unfounded it was said (p. 447):

"But we concur with the Supreme Court of Louisiana in the opinion that the treaty does not regulate the testamentary dispositions of citizens or subjects of the contracting Powers, in reference to property within the country of their origin or citizenship. The cause of the treaty was, that the citizens and subjects of each of the contracting Powers were or might be subject to onerous taxes upon property possessed by them within the States of the other, by reason of their alienage, and its purpose was to enable such persons to dispose of their property, paying such duties only as the inhabitants of the country where the property lies pay under like conditions. The case of a citizen or subject of the respective countries residing at home, and disposing of property there in favor of a citizen or subject of the other, was not in the contem-

plation of the contracting Powers, and is not embraced in in this article of the treaty."

And this view disposes of the elaborate argument concerning the right of the foreign legatees to remove the property as there is here no question of a burden placed by the State of Iowa on the right to remove other than that which the argument assumes may have indirectly resulted from the payment of the lawful duty imposed by the State of Iowa upon its own citizens and as to their property within its own borders. The duty to pay on such property which preceded and accompanied the right of such foreign legatees was not a burden upon their right to remove their property, as such right of property on their part was dependent on the payment and could not and did not arise until the payment was made. *United States* v. *Perkins*, 163 U. S. 625.

This leaves only the contention as to the favored nation clause contained in the first article of the treaty. But as to that it suffices to say that the argument does not take into view, but disregards the words by which the clause is limited and which expressly make it applicable only "in respect of commerce and navigation," a limitation which it has been settled does not embrace the subject we are now dealing with. *Mager* v. *Grima*, 8 How. 490, 494.

Affirmed.

END OF CASE